

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

Drivers, Chauffeurs, and Helpers, Local Union No. 639, a/w International Brotherhood of Teamsters	:	
	:	
Charging Party,	:	
	:	
And	:	
	:	Case No: 5-CA-35687 5-CA-
Daycon Products Company, Inc.	:	35738, 5-CA-35965, 5-CA-35994
	:	
	:	
Respondent.	:	

MOTION TO REOPEN RECORD AND INCLUDE 10(J) TRANSCRIPT

Pursuant to Section 102.48(d)(1) of the Board’s Rules and Regulations, Daycon Products Company, Inc. (hereinafter “Daycon,” “the Employer,” or “Respondent”), by its attorneys Epstein Becker & Green, P.C., moves for an Order that the Record in the above referenced matter be reopened for inclusion of a transcript from an evidentiary hearing conducted to determine whether the National Labor Relations Board’s 10(J) Petition should be granted.

I. PROCEDURAL HISTORY & BACKGROUND

1. On November 17, 18, 19 and 22, 2010 a hearing (“the Hearing”) was conducted before Administrative Law Judge Joel P. Biblowitz (“the ALJ”) regarding Case Numbers 5-CA-35687, 5-CA-35738, 5-CA-35965, and 5-CA-35994.¹

2. The primary issues litigated before the ALJ were as follows:

- a) The allegations of Paragraph 7(c) and (f) of the Complaint, which alleged that on or about April 23, 2010 the Employer implemented its last bargaining offer, and that such conduct was committed

¹ Unless otherwise noted dates herein occurred in 2010.

without first bargaining with the Teamsters Local 639 (“the Union” or “Charging Party”) to a good faith impasse; and

- b) The allegation in Paragraph 7(f) of the Complaint, which alleged that a strike which the Union initiated on April 26 was caused by Daycon’s alleged unfair labor practices; and
- c) The allegation in Paragraph 7(i) of the Complaint which alleged that on or about July 2, 2010 the Union on behalf of the employees made an unconditional offer to return to their former positions of employment.

See G. C. 1-P²

3. Included within the Union’s asserted unconditional offer to return to work was a second paragraph which began “In addition, Local 639 requests that we continue negotiations for a new Collective Bargaining Agreement immediately.” See G.C. 42

4. On Friday December 17, nearly one month after the Hearing adjourned, Respondent received a Petition for 10(j) Relief (“the Petition”) which Wayne Gold, Regional Director of Region 5, filed on behalf of the National Labor Relations Board (“the Board”) with the United States District Court for the District Court of Maryland, Southern Division. See Exhibit A (Petition for Interim Relief). The Petition sought an order requiring that the Company perform each of the following: a) upon request meet and bargain in good faith with the Union; b) to rescind on request of the Union any changes implemented on April 23, 2010; and c) to reinstate all strikers. See Exhibit A at 13-15.

5. On February 10, 2011 an evidentiary hearing pertaining to the Board’s 10(j) Petition (“10(j) Proceeding”) was conducted in the United States District Court for the District Court of Maryland before the Honorable Deborah K. Chasanow.

² Throughout this Motion, references to General Counsel’s exhibits from the Hearing shall be “GC __”, and references to Respondent’s exhibits shall be “R __”, and references to the Official Report of Proceedings shall be “Tr. __”. Citations to the Administrative Law Judge’s Recommended Decision and Order shall appear as “ALJD” followed by the page number.

6. On February 15, 2011 the ALJ issued his Recommended Decision and Order (“ALJD”). He erroneously found that an impasse did not exist. See ALJD at 16. Further he found that the “additional” proviso included in the July 2nd letter from the Union to the Respondent did not “imply” that the offer to return to work was conditioned on the resumption of bargaining. See ALJD at 17.³

7. A 255-page transcript from the 10(j) Proceeding, attached hereto as Exhibit B, was received on February 25, 2011. See Exhibit C (e-mail from the United States District Court for the District Court of Maryland to Grace Balian).⁴

II. EVIDENCE FROM THE 10(j) PROCEEDING

8. The Board called Doug Webber (“Webber”), the chief negotiator for the Union during its collective bargaining negotiations with Daycon (collectively “the Parties”), as a witness at the 10(j) Proceeding. Webber’s testimony regarding what transpired during the Parties’ collective bargaining process and since an impasse was declared was as follows:

- a) Webber testified the Company’s best offer “wasn’t agreeable.” See Exhibit B at 11.
- b) Webber testified the Company’s best offer was unacceptable in July. See Exhibit B at 38.
- c) Webber agreed that without “any doubt” the Company’s offer is currently unacceptable, as it was in July, and previously. See Exhibit B at 43-45
- d) Webber agreed that on April 22 he affirmed the Union’s commitment to wage progression, and that the pension issue was not raised on April 1 or April 22. See Exhibit B at 170.

³ As will be set forth in Respondent’s Brief in Support of its Exceptions to the ALJ’s Recommended Decision and Order, on two separate occasions after remitting its supposed unconditional offer to return to work the Union made clear that reinstatement was specifically tied to rescission of the terms implemented as a result of an impasse being reached and/or the resumption of bargaining. This evidence viewed in conjunction with the Union’s July 2 letter in which bargaining was also requested demonstrate that the Union clearly considered reinstatement, rescission and the resumption of bargaining all inextricably tied together. The ALJ’s failure to consider the Union’s correspondence after July 2 was clear error, and resulted in a finding irreconcilable with the record evidence. See ALJD at 17.

⁴ Ms. Balian is a paralegal for Epstein Becker & Green P.C.

- e) Webber confirmed again that that Company's "best offer" was not acceptable, and has not ever become acceptable to the Union. See Exhibit B at 218.
- f) Webber confirmed the Union's proposal that the Company participate in the Union's Pension Fund had been rejected for decades. See Exhibit B at 176-177.
- g) Webber confirmed that since July the Union has not requested that bargaining resume. See Exhibit B at 165.

9. The Petition claims that unless 10(j) relief is granted the integrity of the collective bargaining process will be jeopardized. See Exhibit A at 11. In support of this premise, Webber testified that the Company's insistence that the strike was an economic strike precluded the Parties from having productive negotiations on July 13.⁵

Our position pretty much is what it was in July where how do you bargain when the company is declaring this to be an economic strike and we've had the proceedings and the trial in November, and our position has been and still is that it's an unfair labor practice strike and the company has demonstrated that the only way they're willing to sit down and do anything would be for us to concede that it was an economic strike and proceed forward under those terms.

See Exhibit B at 39:3-10.

10. About the July 13 meeting specifically, Webber testified "We were trying to see what needed to be done to proceed forward. We had already at that time been made aware that the Labor Board was going to go to complaint on our charges." See Exhibit B at 31:19-21.

⁵ The ALJ erroneously found a causal connection existed between the alleged unfair labor practice and the strike the Union initiated on April 26. At the 10(j) Proceeding, Webber repeated his testimony from the Hearing that employees were not told about the strike until appearing for work on April 26. See Exhibit B at 159. Employees had authorized a strike in February based on the Company's refusal to succumb to the Union's demand for progression. See R. 1. No other strike vote was taken. Since the strike's inception the Union has repeatedly announced that employees are fighting for equal pay for equal work, or put more bluntly – for more money. See R.8 (the unit consists of drivers, warehouse and utility workers who are fighting for equal pay for equal work; R 9 (owners of the company refuse to share their gains with the workforce); and R 19 (we are asking for equal pay for equal work). Accordingly, Webber's testimony that employees were unaware of the strike until arriving for work is further confirmation that the strike was purely to protest what employees deemed an unfair wage structure, and not to vindicate employees' rights under the Act.

11. Webber's direct testimony that the Union knew in advance of the July 13 meeting that the Board would be issuing a Complaint, "opened the door" for questioning regarding how this knowledge impacted the Union's bargaining strategy. During this line of questioning, Webber acknowledged learning of the Board's decision to issue a Complaint on or about July 2. See Exhibit B at 175:18 ("It was around that time, yes"). Additionally, when questioned about how its knowledge that a complaint was forthcoming impacted the Union position, Webber proffered that it was the reason the Union remitted an unconditional offer to return to work:

The Court: I think the question had to do with whether the union believed that the decision of the NLRB to file a Complaint strengthened the union's bargaining position vis-à-vis the company.

A. That is **definitely** a reason why we offered an unconditional return to work.

See Exhibit B at 176 (emphasis added).

12. Presumably, in an effort to support its claim that absent 10(j) relief collective bargaining rights are in peril, the Petition sought an order requiring that Daycon bargain in good faith with the Union.⁶ See Exhibit A at 14. On cross-examination when questioned about the necessity of such an order and its relationship to the other remedies which the Petition sought, Webber was clear – on four separate occasions he reiterated that since July the Union has (and continues to) viewed reinstatement and rescission as one in the same.

Q. Do you think that – do you think it's necessary to have a bargaining order?

⁶ This request is dumbfounding. The Company has repeatedly proclaimed its willingness to bargain with the Union. The Company complied with the Company's July 2 request to resume bargaining. The Parties met on July 13. Since that meeting the Union has never requested that bargaining resume. See Exhibit B at 165; see also Tr. 512 (Ratliff affirming that since July the Union has not contacted Daycon for bargaining). As the Union admits it never requested to bargain, there can be no failure to bargain here. See NLRB v. Colombian Enameling & Stamping Co., 306 U.S. 292, 297 (1939) ("Since there must be at least two parties to a bargain and to any negotiations for a bargain, it follows that there can be no breach of the statutory duty by the employer – when he has not refused to receive communications from his employees – without some indication given to him by them or their representatives of their desire or willingness to bargain.")

A. We had sent the company a letter back in **July**, if I remember correctly saying that **once some of these conditions were met**, we could get back to the bargaining table where we're on equal fair ground to bargain a new collective bargaining agreement.

Q. And some of those conditions would be **rescission**?

A. Correct.

Q. **And reinstatement?**

A. **Correct.**

See Exhibit B at 159:8-18.

Q. The things that the Court is being asked to order are the **same** things that you were looking for back in **July**, right? You being the union.

A. Basically, **yes**.

See Exhibit B at 160:17-20.

Q. And so unless and until the company views it as an unfair labor practice strike **and reinstates and rescinds the charges**, the union will not bargain, correct?

A. I don't know if that's correct for in the future. We feel that we're definitely at a disadvantage right now. That's why November is coming on and that's why we're sitting here today because of the amount of time that has gone by. And we're waiting for some direction, some decision to be made that we feel comfortable with proceeding with. We right now feel we're at a disadvantage to sit down at the bargaining table.

Q. You might feel differently in the future, but going back to **July**, that has been your position, right, that you're bargaining **only if** the company views this as **an unfair labor practice strike and acts accordingly, right?**

A. **Correct.**

See Exhibit B at 161-162:6.

Q: And the union was not going to bargain unless it was viewed as an unfair labor practice strike and **everybody came back and the rescission** took place?

A. At this point in time the company has been issued Complaint against. We felt secure in believing that they violated, the company violated the law, and we would be at a disadvantage to sit down at that time to negotiate a fair agreement.

Q. And so you weren't going to do that **without those conditions being met, correct?**

A. It was a way to get us back to the table, yes.

Q. Okay. That's a yes to that question?

A. **At that time, yes, absolutely.**

See Exhibit B at 178:25-179:12.

III. ARGUMENT

13. The administrative record should be reopened for the inclusion of the transcript from the 10(j) Proceeding. Pursuant to Section 102.48(d)(1) the Board may order that the record be reopened where the moving party demonstrates the evidence was not available at the hearing and that if adduced and credited, a different result would be required. International Broth. of Elec. Workers, Local 48 332 NLRB 1492, 1503 (2000) (Motion denied where evidence antedated the hearing, and the moving party neither explained its failure to introduce the evidence at the hearing nor shown that if introduced a different result would be required).

14. In the instant circumstance, the ALJ erroneously found the impasse invalid because he believed a contemporaneous understanding between the Parties did not exist on April 22. See ALJD at 15-16. Webber's testimony at the 10(j) Proceeding is contrary to the ALJ's decision.

15. Moreover, Webber testified that the Company's best offer, which was originally presented in February 2010, was still unacceptable to the Union over one year later. It is axiomatic that the Union's perception of the Company's best offer on February 11, 2011 was clearly not evidence at the Company's disposal at the Hearing held in November 2010. See National Posters, 282 NLRB 997 (1987) (reopening of record appropriate where evidence was "previously unavailable"); D.H. Martin Petroleum Co., 280 NLRB 547, n.2 (1986) (reopening record to admit state agency determination that was "previously unavailable").

16. The Company bargained in good faith with the Union. Indeed, before the district court General Counsel acknowledged there "is no charge that the employer bargained in bad faith."⁷ It is undisputed that the catch-up issue was the most important issue discussed during the Parties negotiations.⁸ See Exhibit B to Res. Mot. To Preclude And/Or For Protection of Due Process Rights, at 6 n. 11 (conceding catchup "was the most important issue for the Union in the negotiations."). Throughout negotiations the Company was steadfast: Progression to top rate was untenable. Accordingly, the legality of the impasse turns on whether a contemporaneous understanding existed between the Parties on April 22. See Taft Broadcasting Co., 163 NLRB 475, 478 (1967) (factors such as good faith of the parties, importance of issues, and contemporaneous understanding between the parties are critical to determining the validity of an impasse); Laurel Bay Health & Rehabilitation Center & SEIU 1199 New Jersey Health Care Union, 2008 WL 449257 *28 (September 30, 2008) (affirming an Administrative Law Judge's finding which noted that protestations and questions after impasse weighed against the legality of the impasse declaration).

⁷ This acknowledgement was made during oral argument on January 20, 2011 before Judge Chasanow.

⁸ The Parties refer to the terms "catch up" and "progression" interchangeably.

17. At the 10(j) Proceeding, Poole reiterated that progression remained the central issue to negotiations. See Exhibit B at 218. Poole's testimony that catch-up was *and still is* the key issue preventing an agreement, along with Webber's admission that the Union remained committed to catch up fatally undermines the ALJ's decision that a contemporaneous understanding between the Parties did not exist on April 22. Additionally, Webber's testimony that the Employer's best attempt to reach a compromise remains a non-starter nearly one year after its original presentation is convincing evidence regarding the depth of the Parties' divide that existed on April 22 and which is unabridged today in the face of a strike nearing its one year anniversary. See Transport Co. of Texas, 175 NLRB 763 (1969) (recognizing that an impasse maybe shown by a union's willingness to strike and the employer's willingness to weather a strike). See also Lou Stecher's Super Markets, 275 NLRB 475 (1985) (the Union's acknowledgement that the Parties were "far apart" coupled with the subsequent failure to resume negotiations acknowledged further bargaining would be futile).⁹ Accordingly, the evidence sought to be adduced, combined with the evidence from the Hearing, renders the ALJ's finding regarding the validity of the impasse erroneous and requires a different result.

18. Further, as described in Paragraph 12, in response to questions regarding whether 10(j) relief was necessary to prevent irreparable harm, Webber repeatedly testified that only when the company rescinded terms implemented **and** reinstated employees would the Union request that bargaining resume.

19. The issue of irreparable harm was not litigated before the ALJ at the Hearing, as there was no pending 10(j) proceeding. As such, Webber's testimony about the relationship between **immediate** rescission and reinstatement - remedies the 10j petition sought -

⁹ On March 17 Ratliff described the Parties as being very far apart. See G.C. 31 and Tr. 277.

to bargaining could not have been elicited at the Hearing. See D.H. Martin Petroleum Co., 280 NLRB 547, n.2 (1986) cited *supra*.

20. Tellingly, when asked on cross-examination at the 10(j) Proceeding whether knowing a Complaint was forthcoming provided leverage to the Union, Webber said that was the very reason the Union submitted its supposed unconditional offer to return to work. The motivation behind its offer viewed in context with Webber's repeated admissions that in July the Union viewed (and still does view) rescission and reinstatement to be inextricably tied together reveals that the offer to return to work was anything but unconditional. Instead, it was a transparent attempt to preserve employees' right to back pay while continuing to strike for economic purposes. Food Barn Stores, Inc., 1991 WL 14467 (NLRBGC June 21, 1991) (Even if the strike were deemed to have been an unfair labor practice strike, the striking employees would **not** be entitled to back pay because they **never** made an unconditional offer to return to work). As such, admission of Exhibit B into the Record would require a finding that the Union's offer to return to work was not unconditional. Taylor Lumber and Treating, Inc. 326 NLRB 1298, 1310 (1998) citing McCallister Bros., 312 NLRB 1121, 1122 (1993) (holding an offer to return to work conditioned on implementation of terms which existed under an expired agreement was not unconditional and as such a right to reinstatement did not exist).¹⁰

¹⁰ Contrary to the viewpoint of the ALJ, the Employer's treatment of the Union's offer as "unconditional" should not supersede the clear evidence described herein and in the Administrative Record establishing that the Union's request for reinstatement was contingent upon the Company restoring the terms of the expired collective bargaining agreement. Surely the Company is entitled to limit any exposure to liability by treating the offer as unconditional while preserving its legal right to contest this fact if necessary.

WHEREFORE, for all the reasons set forth herein, the transcript from the 10(j) Proceeding contains evidence that was unavailable to Daycon at the Hearing and would require a different result than that reached by the ALJ, and this Motion to Reopen the Record should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the date shown below, copies of the foregoing **Motion to Reopen the Record** were electronically filed and served by email upon the following:

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Dated: March 14, 2011

Exhibit A

To the Honorable Judges of the United States District Court for the District of Maryland:

Wayne R. Gold, Regional Director of Region Five of the National Labor Relations Board (herein called Petitioner or the Board) petitions this Court for and on behalf of the Board pursuant to Section 10(j) of the National Labor Relations Act, as amended (61 Stat. 149; 73 Stat. 544; 29 U.S.C. Sec. 160(j), herein, the Act) for appropriate injunctive relief pending the final disposition of the matter involved herein and pending before the Board on an unfair labor practice charge alleging that Daycon Products Company, Inc. (herein called Respondent) has engaged in, and is engaging in, acts and conduct in violation of Sections 8(a)(1), (3), and (5) of the Act (29 U.S.C. 158(a)(1), (3), and (5)).

The facts of this case, as summarized in this Petition and the accompanying Memorandum of Points and Authorities in Support of this Petition, involve a straightforward scenario of unlawful conduct by Respondent which has effectively deprived employees of their statutory rights under the Act. While Respondent was still bargaining with its employees' chosen collective-bargaining representative, Drivers, Chauffeurs and Helpers Local Union No. 639, affiliated with the International Brotherhood of Teamsters (herein called the Union), Respondent unlawfully and unilaterally decided to change its employees' terms and conditions of employment. Consequently, Respondent's employees represented by the Union exercised their legal right to strike the following workday, in protest of Respondent's unlawful change to their terms and conditions of employment. After nearly eleven weeks, Respondent's employees, through the Union, offered to end their strike and unconditionally return to work on July 6, 2010. On that date and at all times subsequent, Respondent has refused to allow all of these employees to return to their jobs. Rather, Respondent has only allowed individual employees to return to work when, according to Respondent, positions became available.

Petitioner has alleged in an administrative Complaint, and will demonstrate likelihood of success on the merits, that Respondent: (1) in violation of Sections 8(a)(1) and (5) of the Act, unilaterally implemented changes to employees' terms and conditions of employment without first bargaining with the Union to a good-faith impasse; and (2) in violation of Sections 8(a)(1), (3) and (5) of the Act, failed and refused to reinstate striking employees to their former or substantially equivalent positions of employment, after their collective-bargaining representative unconditionally offered for them to return to work. A hearing on the merits of the allegations in the Complaint was held on November 17-22, 2010, before an administrative law judge of the Board. In the interim, Respondent continues to maintain the unilaterally-implemented changes to employees' terms and conditions of employment alleged to have violated the Act, and Respondent also continues to fail and refuse to reinstate the employees to their former or substantially equivalent positions of employment, likewise alleged to violate the Act.

Accordingly, Petitioner shows that injunctive relief is just and proper: to prevent Respondent's alleged violations from irreparably eroding employee support for the Union; to preserve the Union's ability to bargain effectively on behalf of the employees it represents; to prevent the employees from losing the benefits of good-faith bargaining pending the Board's decision; and to prevent the final Board order in this Case from being meaningless.

In support of the request for injunctive relief, Petitioner respectfully shows the following:

1. Petitioner is the Regional Director of Region Five of the Board, an administrative agency of the United States, and files this petition for and on behalf of the Board.

2. The Court has jurisdiction of this matter under Section 10(j) of the Act. Jurisdiction is based on a matter of federal question under 28 U.S.C. § 1331.

3. (a) On April 1, 2010, under the provisions of the Act, the Union filed an unfair labor practice charge with the Board, alleging in Case 5-CA-35687 that Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Sections 8(a)(1) and 8(a)(5) of the Act. A copy of this charge was served by mail on Respondent on April 2, 2010. *Exhibit A at GC Exhibit 1(A)*.

(b) The unfair labor practice charge described in paragraph 3(a) was referred to Petitioner, as the Regional Director of Region Five of the Board, whose office is located in Baltimore, Maryland.

4. (a) On April 27, 2010, under the provisions of the Act, the Union filed an unfair labor practice charge with the Board, alleging in Case 5-CA-35738 that Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Sections 8(a)(1) and 8(a)(5) of the Act. A copy of this charge was served by mail on Respondent on April 29, 2010. *Exhibit A at GC Exhibit 1(C)*.

(b) The unfair labor practice charge described in paragraph 4(a) was referred to Petitioner, as the Regional Director of Region Five of the Board, whose office is located in Baltimore, Maryland.

5. (a) On July 14, 2010, under the provisions of the Act, the Union filed an unfair labor practice charge with the Board, alleging in Case 5-CA-35965 that Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Sections 8(a)(1), 8(a)(3), and 8(a)(5) of the Act. A copy of this charge was served by mail on Respondent on July 15, 2010. *Exhibit A at GC Exhibit 1(E)*.

(b) The unfair labor practice charge described in paragraph 5(a) was referred to Petitioner, as the Regional Director of Region Five of the Board, whose office is located in Baltimore, Maryland.

6. (a) On July 26, 2010, under the provisions of the Act, the Union filed an unfair labor practice charge with the Board, alleging in Case 5-CA-35994 that Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Sections 8(a)(1) and 8(a)(5) of the Act. A copy of this charge was served by mail on Respondent on July 27, 2010. *Exhibit A at GC Exhibit 1(G)*.

(b) The unfair labor practice charge described in paragraph 6(a) was referred to Petitioner, as the Regional Director of Region Five of the Board, whose office is located in Baltimore, Maryland.

7. (a) On July 30, 2010, based upon the unfair labor practice charge described above in paragraph 4(a), the Acting General Counsel of the Board, on behalf of the Board, by the Petitioner, as the Regional Director of Region Five of the Board, issued a Complaint and Notice of Hearing under Section 10(b) of the Act, alleging in Case 5-CA-35738 that Respondent has engaged in, and is engaging in, unfair labor practices as charged within the meaning of Sections 8(a)(1) and 8(a)(5) of the Act. *Exhibit A at GC Exhibit 1(I)*.

(b) On August 13, 2010, Respondent filed an Answer to the Complaint. *Exhibit A at GC Exhibit 1(L)*.

8. (a) On August 31, 2010, based upon the unfair labor practice charges described above in paragraphs 3(a), 4(a), and 6(a), the Acting General Counsel of the Board, on behalf of the Board, by the Petitioner, as the Regional Director of Region Five of the Board, issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing under Section 10(b)

of the Act, alleging in Cases 5-CA-35687 and 5-CA-35738 that Respondent has engaged in, and is engaging in, unfair labor practices as charged within the meaning of Sections 8(a)(1) and 8(a)(5) of the Act. *Exhibit A at GC Exhibit 1(M)*.

(b) On September 14, 2010, Respondent filed an Answer to the Consolidated Complaint. *Exhibit A at GC Exhibit 1(O)*.

9. (a) On September 28, 2010, based upon the unfair labor practice charge described above in paragraphs 3(a), 4(a), 5(a), and 6(a), the Acting General Counsel of the Board, on behalf of the Board, by the Petitioner, as the Regional Director of Region Five of the Board, issued an Order Consolidating Cases, Second Consolidated Complaint and Notice of Hearing under Section 10(b) of the Act, alleging in Cases 5-CA-35687, 5-CA-35738, 5-CA-35965, and 5-CA-35994 that Respondent has engaged in, and is engaging in, unfair labor practices as charged within the meaning of Sections 8(a)(1) and 8(a)(5) of the Act. *Exhibit A at GC Exhibit 1(P)*.

(b) On October 12, 2010, Respondent filed an Answer to the Amended Consolidated Complaint. *Exhibit A at GC Exhibit 1(R)*.

10. (a) On November 17, 2010, based upon the unfair labor practice charge described above in paragraphs 3(a), 4(a), 5(a), and 6(a), Counsel for the Acting General Counsel of the Board, on behalf of the Board, by the Petitioner, as the Regional Director of Region Five of the Board, amended the Second Consolidated Complaint, alleging in Cases 5-CA-35687, 5-CA-35738, 5-CA-35965, and 5-CA-35994 that Respondent has engaged in, and is engaging in, unfair labor practices as charged within the meaning of Sections 8(a)(1), 8(a)(3), and 8(a)(5) of the Act. *Exhibit A at Transcript 9-13*.

(b) On November 17, 2010, Respondent amended its Answer to the Amended Second Consolidated Complaint. *Exhibit A at Transcript 13-16*.

11. A hearing was held on November 17-22, 2010, before an Administrative Law Judge of the Board, concerning the allegations in the Second Amended Complaint described above in paragraphs 3(a), 4(a), 5(a), and 6(a).

12. Based upon the evidence introduced into the administrative record during the hearing described in above in paragraph 10, Petitioner establishes a likelihood of success on the merits of the allegations pled in the Second Consolidated Complaint that Respondent has committed serious violations of Sections 8(a)(1), 8(a)(3), and 8(a)(5) which require the remedy sought herein. More particularly, Petitioner alleges:

(a) Respondent is a District of Columbia Corporation that maintains an office and place of business in Upper Marlboro, Maryland, within this judicial district. Respondent is engaged in the manufacture and distribution of janitorial, maintenance and hardware supplies. During the preceding twelve months, a representative period, in conducting its business operations, Respondent derived gross revenues in excess of \$500,000, and sold and shipped from its Upper Marlboro, Maryland facility goods valued in excess of \$50,000 directly to points located outside the State of Maryland.

(b) Respondent is now, and at all material times has been, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

(c) The Union is an unincorporated association in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and other terms and conditions of employment.

(d) The Union is now, and at all material times has been, a labor organization within the meaning of Section 2(5) of the Act.

(e) At all material times herein, the following individuals have held the positions set forth opposite their respective names, and are now, or have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

- Joe Giusto - Vice-President of Manufacturing
- Jodie Kendall - Human Resources Director
- Bo Nottage - Driver Supervisor
- John Poole - President
- Two Unnamed Agents - Counsel for Respondent

(f) The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All drivers, warehousemen, chemical compounders, utility employees, and repairmen of the Company employed at its 16001 Trade Zone Avenue, Upper Marlboro, MD 20774 location; but excluding office clerical employees, salesmen, professional employees, guards, supervisors, and all other employees.

(g) At all material times herein, the Union has been the designated exclusive, collective-bargaining representative of the Unit and, during such time, the Union has been recognized as such representative by the employer. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from March 3, 2007 to January 31, 2010.

(h) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive, collective-bargaining representative of the Unit.

13. Beginning in November 2009, the parties met on numerous occasions for the purpose of negotiating a successor collective-bargaining agreement. During this time, the parties bargained over a number of issues, the most significant of which was employees' wages. While the parties were still bargaining, Respondent declared impasse on April 22. The following day, Respondent implemented the terms of its final offer, including a wage increase. The Union immediately objected that the parties were at impasse. On April 26, the Union initiated an unfair labor practice strike. On July 2, the Union unconditionally offered for the employees to return to work on July 6. On that date, Respondent did not permit all of its employees to return to work. Since that time, although the parties have continued to bargain, Respondent refuses to rescind the unilateral changes it implemented as part of its final contract offer. Respondent's unlawful conduct has already had a negative impact on employees' support for the Union.

As a result, Respondent has trampled employee free choice, and thwarted the good-faith bargaining efforts of the employees' chosen collective-bargaining representative. Absent interim injunctive relief ordering Respondent to recognize and bargain in good faith with the Union, rescind, upon request, its unilateral changes to its employees' terms and conditions of employment, and reinstate its employees to their positions or substantially equivalent positions, Respondent's unfair labor practices will chill employees' Section 7 rights and cause former strikers to scatter, impede employees' free choice of the Union as collective-bargaining representative, cause the loss of benefits of good-faith bargaining, force irreparable loss of support for the Union and prevent the Board's remedial power.

14. Petitioner establishes a likelihood of success on the merits that Respondent, through the supervisors and agents named above in paragraph 8(e), acting on Respondent's behalf, engaged in a course of conduct designed to: interfere with, restrain and coerce its employees in

the exercise of their rights guaranteed in Section 7 of the Act to form, join or assist labor organizations; and fail and refuse to bargain collectively and in good faith with the Union, the collective-bargaining representative of its employees, with respect to wages, hours, and other terms and conditions of employment. More specifically, and in support of this request for injunctive relief, Petitioner submits the following:

15. (a) At various times during the months of November 2009 through April 2010, Respondent and the Union met for the purposes of negotiating a successor collective-bargaining agreement to the agreement described above in paragraph 11(g), dealing with the terms and conditions of employment of the Unit.

(b) On or about April 23, 2010, Respondent implemented its last bargaining offer.

(c) Respondent engaged in the conduct described above in paragraph 15(b) without first bargaining with the Union to a good-faith impasse.

(d) The effects on the Unit of Respondent's decision, described above in paragraph 15(b), relate to the wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(e) Since on or about July 23, 2010, Respondent has failed and refused to rescind the unilateral changes described above in paragraphs 15(b) and 15(c).

16. (a) Since on or about April 26, 2010, certain employees of Respondent, represented by the Union, engaged in a strike.

(b) The strike described above in paragraph 16(a) was caused by Respondent's unfair labor practices described above in paragraphs 15(b) through (c) and was prolonged by the unfair labor practices of Respondent described below in paragraph 16(d).

(c) On or about July 2, 2010, the Union, on behalf of the Unit, made an unconditional offer for the employees to return to their former positions of employment.

(d) Since on or about July 6, 2010, Respondent has failed and refused to reinstate the employees to their former or substantially equivalent positions of employment.

17. By the conduct described above in paragraphs 15 and 16, and all subparagraphs contained therein, Respondent has been interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

18. By the conduct described above in paragraphs 15 and 16, and all subparagraphs contained therein, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive, collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

19. By the conduct described above in paragraph 16, and all subparagraphs contained therein, Respondent has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Sections 8(a)(1) and (3) of the Act.

20. The unfair labor practices of Respondent described above in paragraphs 15 and 16, and all subparagraphs contained therein, affect commerce within the meaning of Section 2(6) and (7) of the Act.

21. The unfair labor practices of Respondent described above in paragraphs 9 through 16 have taken place within this judicial district.

22. There is no adequate remedy at law for the irreparable harm being caused by Respondent's unfair labor practices, as described above in paragraphs 9 through 16.

23. Petitioner submits that, based on the conduct pending before the Board in Cases 5-CA-35738, 5-CA-35965, and 5-CA-35994, it may fairly be anticipated that unless Respondent is immediately enjoined and restrained, Respondent will continue to engage in those acts and conduct, or similar acts and conduct, constituting unfair labor practices in violation of Sections 8(a)(1), (3) and (5) of the Act, and will continue to: (1) interfere with, restrain and coerce employees in the exercise of the rights guaranteed in Section 7 of the Act; (2) fail and refuse to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act; and (3) discriminate in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization.

24. Petitioner submits that such violations of the Act, if they are not enjoined immediately, will deprive employees of the benefits of collective bargaining that lie at the heart of the Act and will lead inevitably to the erosion of employee support for the Union as the employees' collective-bargaining representative. In this regard, a Board order that issues months in the future, after the administrative proceeding has fully run its course, will be ineffective to prevent the irreparable harm occurring now to employees' Section 7 rights. The interim relief sought in this proceeding, namely, an order from this Court enjoining Respondent's conduct, offering the unfair labor practice strikers reinstatement to their former jobs or substantially equivalent positions, rescinding, upon request, Respondent's unilateral changes to employees' terms and conditions of employment, and requiring that Respondent, upon request, bargain collectively and in good faith with the Union immediately, will prevent any further loss of support and is far superior to a Board order that may issue months from now, when employee

support for the union may be completely extinguished as a result of Respondent's flagrant and unremedied unfair labor practices.

25. Granting the temporary injunctive relief requested by Petitioner will cause no undue hardship to Respondent because Respondent will merely be required to do what it is already legally obligated to do, to cease and desist from committing unfair labor practices and to bargain in good faith with the exclusive collective-bargaining representative of its employees before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees. Injunctive relief would merely require Respondent to: (a) offer interim reinstatement to the unfair labor practice strikers; (b) rescind, at the Union's request, its unilateral changes to employees' terms and conditions of employment; and (c) to bargain in good faith with the Union, and post the District Court's order. Petitioner's likelihood of success on the merits is demonstrated through the evidence introduced into the administrative record at the hearing described above in paragraph 11.

26. Finally, there is a strong public interest in preserving the efficacy of the Board's final Order. Without injunctive relief, the Board's final order and any subsequent United States Court of Appeals decree may fail to effectively remedy the violations of the Act present here. During the interim, Respondent will have continued with its unilateral implementation of changes to the terms and conditions of employment to such an extent that employees will become accustomed to the new terms and conditions of employment, the employees will continue to be unable to return to their jobs, and the employees will foreseeably lose confidence in the ability of the Union to effectively represent them and will abandon their support for the Union.

27. In balancing the equities in this matter, the foreseeable irreparable injury to employees, the Union, and the Board's ability to effectively remedy violation of the Act, along

with the strong public interest in preserving employees' Section 7 rights to freely select their collective-bargaining representative and to have that representative bargain on their behalf, far outweighs any harm that injunctive relief might cause to Respondent.

28. To avoid the serious consequences described above, it is essential, appropriate, and just and proper for the purposes of effectuating the policies of the Act and avoiding substantial, irreparable and immediate injury to such policies, to the employees and the union involved, and to the public interest, and in accordance with the purposes of Section 10(j) of the Act, that pending the final disposition of Cases 5-CA-35687, 5-CA-35738, 5-CA-35965, and 5-CA-35994, Respondent be enjoined and restrained as prayed below:

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays:

1. That the Court issue an order directing Respondent promptly to file an answer to the allegations of this petition and to appear before this Court, at a time and place fixed by the Court, and show cause, if any there be, why an injunction should not issue enjoining and restraining Respondent, its officers, agents, representatives, employees, attorneys, and all persons acting in concert or participation with them, pending the final disposition of the matters involved herein, pending before the Board, cease and desist from:

(a) Refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the following unit:

All drivers, warehousemen, chemical compounders, utility employees, and repairmen of the Company employed at its 16001 Trade Zone Avenue, Upper Marlboro, MD 20774 location; but excluding office clerical employees, salesmen, professional employees, guards, supervisors, and all other employees.

(b) Discriminating against unfair labor practice strikers by failing and refusing to reinstate them immediately to their former positions on their unconditional offer to return to work made on July 2, 2010;

(c) Unilaterally implementing terms and conditions of employment without first bargaining with the Union to a good-faith impasse;

(d) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their Section 7 rights.

2. That the Court further order that Respondent take the following affirmative action:

(a) Upon request, to meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees concerning wages, hours, and other terms and conditions of employment and if an agreement is reached to reduce it to writing and to sign it;

(b) To rescind on request of the Union, any or all of, the unilateral changes implemented on April 23, 2010;

(c) Within five days from the date of the District Court's Order, offer all unfair labor practice strikers, in writing, immediate and full interim reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed;

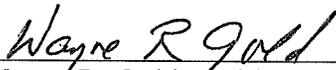
(d) To post copies of the District Court's Order at Respondent's Upper Marlboro, Maryland location at all locations where Respondent's notices to employees are customarily posted. Said postings shall be maintained during the pendency of the Board's proceedings free from all obstructions and defacements, and agents of the

Regional Director of Region 5 of the Board shall be granted reasonable access to Respondent's Upper Marlboro, Maryland facility to monitor compliance with this posting requirement, and;

(e) Within twenty (20) days of the issuance of this order, to serve upon the District Court, and to submit a copy to the Regional Director of Region 5 of the Board, a sworn affidavit from a responsible Respondent official describing with specificity the manner in which the Respondent has complied and will continue to comply with the terms of this decree, including the location of the document to be posted under the terms of this decree.

Dated at Baltimore, Maryland, this 17th day of December 2010.

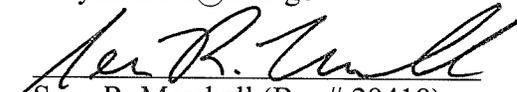
Respectfully submitted,



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Exhibit B

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3 SOUTHERN DIVISION

4 WAYNE R. GOLD .
5 vs. . DOCKET 10-3540
6 DAYCON PRODUCTS COMPANY . GREENBELT, MARYLAND
7 . FEBRUARY 10, 2011

8
9 TRANSCRIPT OF MOTIONS HEARING
10 BEFORE THE HONORABLE DEBORAH K. CHASANOW
11 UNITED STATES DISTRICT JUDGE

12 A P P E A R A N C E S

13 FOR THE PETITIONER: SEAN R. MARSHALL, ESQ.
14 DANIEL HELTZER, ESQ.

15 FOR THE RESPONDENT: MARK McKAY TRAPP, ESQ.
16 PAUL ROSENBERG, ESQ.
17 KARA MATHER MACIEL, ESQ.

18 Court Reporter: Sharon O'Neill, RMR
19 Official Court Reporter
20 United States District Court
21 6500 Cherrywood Lane
22 Greenbelt, Maryland 20770
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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
DOUGLAS WEBBER	7	40 129	185 201	193
RONNIE McFADDEN	79	95	106	
BRENDA TAYLOR	108	120		
JOHN POOLE	202	209	217	218

1 THE COURT: Good morning.

2 VOICES: Good morning, Your Honor.

3 THE COURT: Please be seated.

4 THE CLERK: The matter now pending before the Court
5 is DKC 2010-3540, Wayne R. Gold on behalf of the National Labor
6 Relations Board vs. Daycon Products Company, Inc. The matter
7 now comes before the Court for an evidentiary hearing. Counsel
8 please identify yourselves for the record.

9 MR. MARSHALL: Your Honor, Sean R. Mashall on behalf
10 of Wayne R. Gold, Petitioner.

11 MR. HELTZER: Good morning, Your Honor. Daniel M.
12 Heltzer, here on behalf of Wayne R. Gold, the Petition.

13 MR. TRAPP: Good morning, Judge. Mark Trapp on
14 behalf of the Respondent Daycon Products.

15 MR. ROSENBERG: Good morning, Your Honor. Paul
16 Rosenberg on behalf of Daycon Products, Inc.

17 THE COURT: And you have Mr. Poole sitting with you.
18 All right. Okay. Are we ready to begin with the evidentiary
19 presentation. Mr. Marshall.

20 MR. MARSHALL: Your Honor, there are two preliminary
21 matters which I wanted to bring to your attention, and Mr.
22 Trapp and I have discussed them.

23 THE COURT: Okay.

24 MR. MARSHALL: One is in relation to an exhibit which
25 was introduced at the underlying administrative trial which we

1 had provided to the Court. Unfortunately, it looked, in terms
2 of the copying, the document, which was over-sized, got copped
3 up. So I have five copies of the full size document, and it
4 was General Counsel Exhibit 37 in the underlying administrative
5 record.

6 THE COURT: Okay.

7 MR. MARSHALL: Permission to approach, Your Honor?

8 THE COURT: Sure. Of course.

9 MR. MARSHALL: Your Honor, would you like a copy?

10 THE COURT: No.

11 MR. MARSHALL: Is two companies sufficient.

12 THE COURT: Yes.

13 MR. MARSHALL: The other preliminary matter, Your
14 Honor, is an exhibit which I think that Daycon will stipulate
15 to. It is their group health benefits plan, the document
16 describing their group health benefits plan. I have not marked
17 these in terms of numbers and I'm happy to do so in whatever
18 the Court's preference is.

19 Obviously, the exhibits from the administrative
20 matter were numbered. The exhibits attached to the petition
21 were lettered A, B and C. I'm happy to start at the end from
22 our numbers, or start with number D, whatever is your
23 preference, Your Honor.

24 THE COURT: Well, okay. My understanding was that we
25 all understood that the administrative record has been provided

1 to the Court, and I don't want those again. That we discussed
2 on the, I don't think whether it was at the hearing or on the
3 phone, that I could consider all of those exhibits. If there
4 were specific objections to what I make of them, that we would
5 discuss it.

6 I don't know that that agreement extended to exhibits
7 attached to the Petition which, as I recall, are some
8 declarations. That's a different matter, so I don't know that
9 you should assume that those are before me.

10 MR. MARSHALL: Very good, Your Honor.

11 THE COURT: So if you just -- I don't care whether we
12 call it Hearing exhibit or how you do it, as long as we all
13 understand what we're taking about. Okay.

14 MR. MARSHALL: All right. If it's okay with Your
15 Honor, I'll start with GC Exhibit 80. I think that we left off
16 at 65 or 66 in the underlying administrative matter. Just for
17 --

18 THE COURT: Okay. We'll know those were introduced
19 at the hearing if they have numbers 80 and above. Right? Is
20 that what you're saying?

21 MR. MARSHALL: That they were not introduced at the
22 administrative hearing.

23 THE COURT: Exactly.

24 MR. MARSHALL: Okay.

25 THE COURT: But you're going to mark them General

1 Counsel Exhibit 80.

2 MR. MARSHALL: I will begin with number 80.

3 THE COURT: Okay. All right. Anything else before
4 we begin?

5 MR. MARSHALL: Nothing preliminarily, Your Honor. If
6 I have a moment just to --

7 THE COURT: Mark them.

8 MR. MARSHALL: -- number these and then I'll call
9 General Counsel's first witness.

10 THE COURT: Okay.

11 MR. MARSHALL: Permission to approach, Your Honor.

12 THE COURT: Local Rules say if you're walking around
13 with exhibits, just go right ahead.

14 MR. MARSHALL: Thank you, Your Honor.

15 MR. TRAPP: Judge, I might just add one thing for the
16 record here about the GC Exhibit 80.

17 THE COURT: Um hum.

18 MR. TRAPP: That sean and I have discussed it and I
19 will stipulate to its admission for the purpose of establishing
20 what the coverage was that was provided to the employees, but
21 not for anything beyond that, or to show that whatever the
22 employees might testify to today as far as specific issues
23 might have fallen within that coverage.

24 THE COURT: You stipulate that it is what it purports
25 to be and that's about it.

1 MR. TRAPP: But not that anything that they might
2 testify to would have actually been covered by it.

3 THE COURT: Their expectation of what that meant or
4 anything else is subject to other issues. Okay. All right.

5 MR. MARSHALL: Your Honor, I'm going to call
6 Mr. Douglas Webber to testify.

7 (The oath was administered.)

8 THE CLERK: Please be seated in the witness stand.
9 Speak loud and clearly into the microphone. Please state your
10 name for the record.

11 THE WITNESS: Douglas James Webber.

12 THE CLERK: Spell your last name, please.

13 THE WITNESS: W E B B E R.

14 THE COURT: Mr. Marshall.

15 DIRECT EXAMINATION

16 BY MR. MARSHALL:

17 Q. Good morning, Mr. Webber. My name is Sean Marshall. I'm
18 counsel for the Petitioner here, Wayne Gold, Regional Director
19 for Region Five of the National Labor Relations Board. I'm
20 going to be asking you some questions this morning.

21 Mr. Webber, are you employed?

22 A. Yes.

23 Q. Who is your employer?

24 A. Teamsters Local 639.

25 Q. And what is your job with Teamsters Local 639?

1 A. Business agent.

2 Q. How long have you held that possession?

3 A. Six years.

4 Q. Prior to becoming a business agent, Mr. Webber, were you
5 employed?

6 A. Yes.

7 Q. Please describe your employment history up to becoming a
8 business agent.

9 A. Immediately before being a business agent I was a tractor
10 trailer driver for Safeway Foods for approximately six years.
11 Prior to that I worked at the International Brotherhood of
12 Teamsters headquarters in D.C. and held various positions
13 there, ranging from organizer to international representative
14 to the director of the car haul division.

15 Q. And as a business agent for Teamsters Local 639, Mr.
16 Webber, could you please describe for the Court what your
17 duties are?

18 A. I negotiate and police and enforce collective bargaining
19 agreements between the local union and the various companies
20 that I'm charged with.

21 Q. How many companies are you responsible for?

22 A. Approximately ten.

23 Q. Mr. Webber, just so the Court has a complete picture,
24 could you describe what a collective bargaining agreement is?

25 A. It's an agreement that's reach between the local union,

1 the membership and the various companies, and outlines the
2 terms, conditions, wages, of employment between the employees
3 and the companies.

4 Q. In your job as a business agent for Teamsters 639, are you
5 familiar with a company called Daycon?

6 A. Yes.

7 Q. What is Daycon?

8 A. Daycon Products is one of the companies that's assigned to
9 me, and they are a janitorial and maintenance supply
10 distributor which covers basically Maryland, northern Virginia,
11 Washington, D.C. area.

12 Q. How long has Daycon been assigned to you?

13 A. Six years.

14 Q. What is the unit that Teamsters 639 represents at Daycon?

15 A. Unit consists of various classifications, drivers
16 warehousemen, utility people, compounders, repairmen.

17 Q. Do you know how many employees are in that unit
18 approximately?

19 A. Approximately 54, 55.

20 Q. Mr. Webber, I want to direct your attention to the fall of
21 2009. Were you a business agent for Daycon at that time?

22 A. Yes.

23 Q. Now, at that time was there a collective bargaining
24 agreement in place between 639 and Daycon?

25 A. Yes.

1 Q. What were the effective dates of that collective
2 bargaining agreement?

3 A. It was set to expire January 31, 2010.

4 Q. Did you participate in any negotiations for a successor
5 collective bargaining?

6 A. Yes.

7 Q. What was your role in those negotiations?

8 A. Lead negotiator.

9 Q. Did the parties agree on a new collective bargaining
10 agreement?

11 A. No.

12 Q. Did the employees continue to work after their collective
13 bargaining agreement expired?

14 A. Yes.

15 Q. Did the parties continue to bargain after the collective
16 bargaining agreement expired?

17 A. Yes.

18 Q. Did there come a point in time when the employees went on
19 strike, Mr. Webber?

20 A. Yes.

21 Q. When did the strike begin?

22 A. The morning of April 26, 2010.

23 Q. What day of the week was that?

24 A. Monday morning.

25 Q. Do you know when it was decided that there would be a

1 strike?

2 A. The Friday before, Friday afternoon before.

3 Q. Who made that decision?

4 A. Tommy Ratliff, President of the local, John Gibson,
5 secretary/treasurer.

6 Q. Did you participate in that decision?

7 A. I participated in the discussion, yes.

8 Q. And what is your understanding of why the strike was
9 called?

10 A. Because of the unfair labor practices that the company
11 committed on April 22nd and 23rd.

12 Q. What took place on those dates?

13 A. April 22nd we were in negotiations. There was proposals
14 that were given to the company. The company said they were
15 going to go down the hall and crunch numbers. A short time
16 after that we had found that they had left the building without
17 letting us or a federal mediation that was involved at that
18 time, even know that they had left.

19 Later that afternoon, when I got back to my office, I
20 received a letter where they had illegally declared impasse.
21 The next day I was made aware that they had implemented what
22 they termed their best offer.

23 Q. And what was your understanding of what that best offer
24 was?

25 A. It wasn't agreeable. We were prepared to bargain and

1 continuing bargaining on the 22nd, and we were taken aback and
2 surprised when they had just left and didn't continue
3 bargaining.

4 Q. My question, Mr. Webber, was what was your understanding
5 of what was implemented?

6 A. I believe there was four bullet points as far as wages and
7 a distress clause and --

8 Q. At the time what your understanding of what was
9 implemented regarding the wages?

10 A. Forty cents across the board and anybody that was in that,
11 some type of progression would be 60 cents an hour.

12 Q. You referred to "progression," Mr. Webber. What is
13 progression?

14 A. Progression is where somebody is not making the top rate
15 of pay, and they're somewhere in between the starting pay and
16 the top rate.

17 Q. Now, on April 26th, were you at Daycon at any point in
18 time?

19 A. Yes, I was there about 5:00 --

20 Q. When did you arrive at Daycon?

21 A. Approximately 5:30 in the morning.

22 Q. Mr. Webber, do you know when the first workers show up at
23 Daycon?

24 A. Probably between 5:30 and 6:00 is when they start
25 reporting for work.

1 Q. Were there any other employees there when you arrived that
2 morning?

3 A. Not that I recall.

4 Q. Mr. Webber, could you please describe what you did after
5 you arrive at Daycon?

6 A. I had prepared strike signs over the weekend, and as the
7 workers were reporting to work I had let them know that we
8 initiated an unfair labor practice strike. I asked them to
9 please park their car on the street and join the picket line.

10 Q. Mr. Webber, this document was already introduced at the
11 prior administrative trial as the sign. Does this accurately
12 reflect the size of the sign?

13 A. Yes, it does.

14 Q. Could you describe what employees did with the sign that
15 you gave them?

16 A. I had prepared with strings so each one could wear one,
17 and they did.

18 Q. As best you can recall, Mr. Webber, how many employees
19 participated in the strike that morning?

20 A. I want to say the day shift which was reporting to work
21 between 5:30 and 6:00, the majority of them had participated.

22 Q. Is there a second shift?

23 A. Yes.

24 Q. Were you present for when the second shift arrived?

25 A. Yes.

1 Q. How many employees participated in the strike during the
2 second shift?

3 A. The majority of them did, yes.

4 Q. And for the record, Mr. Webber, when are the hours of the
5 second shift at Daycon?

6 A. They start coming in 2:30, 3:00.

7 Q. Did any employees not participate in the strike that day,
8 April 26th?

9 A. I was told that there were some that did not participate,
10 yes.

11 Q. Do you know how many did not participate that morning?

12 A. I would -- The first couple days of the strike, I was
13 trying to get an accurate head count. From what I'm being told
14 the first day or two that there was approximately eight or ten
15 that continued to work.

16 Q. Do you know who continued to work?

17 A. Some of them.

18 Q. Okay. Did the strike continue after April 26th, Mr.
19 Webber?

20 A. Yes.

21 Q. Did it continue for the rest of that week in April?

22 A. Yes.

23 Q. Again, I'd ask you, how many employees participated during
24 the first week of the strike?

25 A. I think all but eight or ten.

1 Q. Now, in that first week of the strike, were you attending
2 the picket line?

3 A. Pretty regular, yes.

4 Q. How often were you attending in that first week?

5 A. Daily.

6 Q. Mr. Webber, could you describe where the picket line was
7 located at Daycon's facility?

8 A. Well, Daycon has two entrances. One is primarily an
9 employee bargaining unit entrance along with truck entrance and
10 exit, and then there's a smaller entrance at the far end of the
11 property on Trade Zone Avenue, where a lot of the front office
12 people in their personal vehicles enter in and out of.

13 Q. So where was the picket line located?

14 A. Initially it was just at the primary, the large entrance
15 where the trucks and the members report to work.

16 Q. From where the picket line was, could you see the other
17 entrance?

18 A. Yes.

19 Q. Approximately how far away is the, you said for the front
20 office people, that entrance from the employee entrance?

21 A. Seventy-five yards.

22 Q. From where you were at the employee entrance, could you
23 see individuals coming to work at the other entrance?

24 A. Yes.

25 Q. Mr. Webber, I'm going to show you a document that I'm

1 marking as General Counsel Exhibit 81.

2 THE COURT: You don't need to give so many copies of
3 all of this, really.

4 Q. Mr. Webber, if you could take a moment and look over what
5 I've handed you and look up at me when you're finished.

6 Do you recognize this document, Mr. Webber?

7 A. Yes.

8 Q. What is this document?

9 A. These are the letters that the local union had received
10 from members that had resigned their membership from the local
11 union.

12 MR. MARSHALL: At this time, Your Honor, I moved for
13 the admission of General Counsel Exhibit 81.

14 THE COURT: Any objection?

15 MR. TRAPP: No objection, Judge.

16 THE COURT: It's received.

17 Q. Mr. Webber, are you familiar with the term
18 "decertification petition?"

19 A. Yes.

20 Q. What is a decertification petition?

21 A. It's a petition generated from the workers where they can
22 petition the National Labor Relations Board to have an election
23 to disqualify the union from being their bargaining
24 representative.

25 Q. Do decertification petitions have to be supported by a

1 certain percentage of employees' signatures?

2 A. I believe it's 30 percent.

3 Q. Mr. Webber, I'm going to show you a document that was
4 introduced at the underlying administrative matter as General
5 Counsel Exhibit 44. Can you see that document okay, Mr.
6 Webber?

7 A. Yes.

8 Q. What I would like to do is direct your attention to the
9 email from Mr. J.P. Crupin to you, and refer you to the second
10 paragraph.

11 Do you see the sentence that begins "Approximately --
12 that reads "Approximately 20 percent of former strikers have
13 asked to return to work and are presently employed by the
14 employer since the strike's inception."

15 A. Yes.

16 Q. What is 20 percent of the unit at Daycon?

17 A. Approximately ten.

18 Q. Mr. Webber, did the strike continue through the month of
19 May?

20 A. Yes.

21 Q. During the month of May did you go to the picket lines?

22 A. Yes.

23 Q. How often did you go to the picket line in the month of
24 May?

25 A. Probably almost daily.

1 Q. Did the location of the picket line change?

2 A. It sometimes varied from the main gate to include the
3 smaller gate and vice-versa.

4 Q. When you were present at the picket line during the month
5 of May, did you see people coming and going to work at Daycon?

6 A. Yes.

7 Q. At the time, in the month of May, did employees continue
8 to wear the signs that I showed you before?

9 A. Yes.

10 Q. Did the strike also continue into the month of June?

11 A. Yes.

12 Q. And through the month of June?

13 A. Yes.

14 Q. Could you please describe your attendance at the picket
15 line in the month of June?

16 A. Tried to be daily, sometimes twice daily, usually in the
17 morning and then usually again in the afternoon for the
18 afternoon shift. Combination of being on the picket line at
19 the location and also doing some ambulatory picketing.

20 Q. At Daycon's actual location, did the location of the
21 picket line change at all in the month of June?

22 A. No.

23 Q. When you were attending, could you see people coming and
24 going to work at Daycon?

25 A. Yes.

1 Q. Did employees continue to wear the signs?

2 A. Yes.

3 Q. Now, at any point in time, Mr. Webber, did the union offer
4 for the striking employees to go back to their jobs?

5 A. Yes.

6 Q. Who made that offer, Mr. Webber?

7 A. I did.

8 Q. Who did you make that offer to?

9 A. J. Crupin.

10 Q. How did you make that offer?

11 A. By email.

12 Q. When did you make that offer.

13 A. July 2nd.

14 Q. I'm going to show you a document, Mr. Webber, that was
15 already introduced at the administrative matter as General
16 Counsel Exhibit 42. Can you see that document, Mr. Webber?

17 A. Yes.

18 Q. Is that the email that you sent to Mr. Crupin on July 2nd?

19 A. Yes, it is.

20 Q. Now, regarding the second paragraph, did you request to
21 meet with Mr. Crupin for bargaining?

22 A. Yes, I did.

23 Q. Did you receive a response to this email?

24 A. Yes.

25 Q. Who did you receive a response from?

1 A. I believe it was J. Crupin.

2 Q. I'm going to show you a document that was introduced at
3 the underlying administrative matter, Mr. Webber, as General
4 Counsel Exhibit 43. Is this the response that you received
5 from Mr. Crupin?

6 A. Yes.

7 Q. Mr. Webber, were employees allowed to go back to their
8 jobs on July 6th?

9 A. No.

10 Q. Mr. Webber, I'm going to show you a document that was
11 introduced at the underlying administrative matter as General
12 Counsel 44. That's the document I showed you earlier.

13 If I could direct your attention to the first
14 paragraph of Mr. Crupin's email, and the sentence that reads
15 "This is an economic strike called for and conducted by Local
16 639." Mr. Webber, is it the union's position that its strike
17 is an economic strike?

18 A. No.

19 Q. What is the union's position as to the nature of the
20 strike?

21 A. From day one, an unfair labor practice strike.

22 Q. Mr. Webber, since you made your offer for the employees to
23 return to their jobs on July 6th, have all the employees been
24 allowed to go back to their jobs?

25 A. No.

1 Q. Have any employees been allowed to go back to their jobs?

2 A. Approximately ten.

3 Q. Do you know who has been allowed to go back to their jobs?

4 A. I know some, yes. I don't have all ten names that I can
5 recall but, yes, I do know who went back.

6 Q. Could you please describe who you know that has gone back
7 to work, Mr. Webber.

8 A. Dale Windsor, Victor Scurry, Oliver Robinson, Stanley
9 Miller, William Posey.

10 Q. Do you know an employee named Hubert Taylor?

11 A. Yes.

12 Q. Has Hubert Taylor been allowed to go back to work?

13 A. Yes.

14 Q. And I didn't hear you before, Mr. Webber. Did you mention
15 a Mr. Posey?

16 A. Yes.

17 Q. Has he been allowed to go back to work?

18 A. Yes.

19 Q. Do you know an employee named Howard Robinson?

20 A. Yes.

21 Q. Has he been allowed to go back to work?

22 A. Yes.

23 Q. Are you familiar with an employee named Hasmon Abraham?

24 A. Yes.

25 Q. Has he been allowed to go back to work?

1 A. Yes.

2 Q. Are you familiar with an employee name Robert Redmond?

3 A. Yes.

4 Q. Has he been allowed to go back to work?

5 A. Yes.

6 Q. Do you know an employee named John Merit?

7 A. Yes.

8 Q. Has he been allowed to go back to work?

9 A. Yes.

10 Q. Do you know an employee name John Day?

11 A. Yes.

12 Q. Has he been allowed to go back to work?

13 A. Yes.

14 Q. Do you know an employee named Tom Geris?

15 A. Yes.

16 Q. Has he been allowed to go back to work?

17 A. Yes.

18 Q. Do you know an employee named Thomas McNeill?

19 A. Yes.

20 Q. Has he been allowed to go back to work?

21 A. Yes.

22 Q. Do you know an employee named William Davis?

23 A. I'm not sure who he is.

24 Q. Do you know an employee named Brian Twisdale or Tweisdale?

25 A. A little bit, yes.

1 Q. Has he been allowed to go back to work?

2 A. I believe he is working.

3 Q. Now, those employees, were they allowed to go back to work
4 on a particular day?

5 A. No.

6 Q. When were these individuals allowed to go back to work?

7 A. Sporadically, after the offer.

8 Q. Now, Mr. Webber, in your job are you familiar with the
9 term "economic striker?"

10 A. Yes.

11 Q. What is your understanding of who an economic sticker is?

12 A. An economic striker is a striker that's striking primarily
13 for economical reasons.

14 Q. And what is your understanding of when, if ever, an
15 economic striker can go back to their job?

16 A. My understanding is that they'll be called back on an as
17 needed basis when positions become available.

18 Q. Are you familiar with the term "unfair labor practice
19 striker?"

20 A. Yes.

21 Q. What is your understanding of what an unfair labor
22 practice striker is?

23 A. They're strikes that are trying to protect their rights
24 under the Act and they're striking because the company had
25 violated the Act.

1 Q. And what is your understanding of when, if ever, an unfair
2 labor practice striker can go back to their job?

3 A. Upon an offer of unconditional return.

4 Q. When you made your over to Mr. Crupin on July 2nd, did you
5 expect that employees would go back to their jobs?

6 A. Yes, I did.

7 Q. Now, after employees were not permitted to go back to
8 their jobs as a group on July 6th, did the employees continue
9 to picket?

10 A. Yes.

11 Q. Is there currently a picket line at Daycon?

12 A. Yes.

13 Q. Is it located in the same place?

14 A. Yes.

15 Q. Do you go to the picket line?

16 A. Yes.

17 Q. How often do you go to the picket line?

18 A. It's probably two, three times a week now.

19 Q. When do you go to the picket line?

20 A. When my calendar permits it. As I mentioned earlier, I
21 have several other locations that I have to maintain as well
22 and the picket line is there, consistently there, and I can get
23 by there when I can, when my calendar permits.

24 Q. What time of the day do you attend to picket line?

25 A. It depends where I'm at. If I'm in a location or area.

1 I'm there usually every Friday, and that's when I can see who's
2 ever on the picket line, that's who I can see then.

3 Q. Do you see employees at the picket line?

4 A. Yes.

5 Q. Who do you see at the picket line?

6 A. Regularly I see Mr. Boone, Ellis Parran, Eugene, a few
7 others.

8 Q. Do you know how old Mr. Boone is?

9 A. I have a pretty good idea, yes.

10 Q. What's your understanding of how old Mr. Boone is?

11 A. He's about 65 year old.

12 Q. How about Mr. Parran?

13 A. I believe he's in that neighborhood too.

14 Q. Are there any employees that you do not see at the picket
15 line as often as you used to?

16 A. Yes.

17 Q. Are you familiar with an employee named Adalberto Mendez?

18 A. Yes.

19 Q. Do you see him as often as you used to?

20 A. No.

21 Q. Are you familiar with an employee named Rawle Daniels?

22 A. Yes.

23 Q. Do you see him as often as you used to?

24 A. No.

25 Q. Are you familiar with an employee named Lynette Burton?

1 A. Yes.

2 Q. Do you see her as often as you used to?

3 A. No.

4 Q. Are you familiar with an employee named Derrall Bridges?

5 A. Yes.

6 Q. Do you see him as often as you used to?

7 A. No.

8 Q. Are you familiar with an employee named John Smith?

9 A. Yes.

10 Q. Do you see him as often as you used to?

11 A. No.

12 Q. Are you familiar with an employee named Mike Renteria?

13 A. Yes.

14 Q. Do you see him as often as you used to?

15 A. No.

16 MR. MARSHALL: Judge, if I could have a moment to
17 mark these. Am I up to 82?

18 THE CLERK: Yes.

19 MR. MARSHALL: This would be 82?

20 THE CLERK: This would be 82.

21 MR. MARSHALL: Thank you.

22 Q. I'm going to hand you a document. Please take a few
23 minutes to look it over. Please look up to me when you're
24 done.

25 A. Okay.

1 Q. Mr. Webber, do you recognize the document that I handed to
2 you?

3 A. Yes.

4 Q. What is that document that I've handed to you?

5 A. It's a picket line sign-in sheet.

6 Q. And are there multiple sign-in sheets, Mr. Webber?

7 A. Yes.

8 Q. How often is there a sign-in sheet at the picket line?

9 A. We try to put one out once a week.

10 Q. Where is that picket line kept at the picket line?

11 A. It used to be kept in a Port-a-John overnight, so it was
12 there in the morning when people report to work. The picket
13 line did not run 24 hours a day, so they wanted to make sure
14 that it was left for the afternoon shift when they showed up
15 and then also be there in the morning for the following day.

16 Q. Is that sign-in sheet collected at any point in time?

17 A. Yes.

18 Q. Who collects the sign-in sheet?

19 A. It was usually given back to me.

20 Q. And what purpose do you have for the sign-in sheets?

21 A. Well, to maintain that the level of support, the level of
22 participation.

23 MR. MARSHALL: Your Honor, at this time I'm going to
24 move for admission of General Counsel Exhibit 82.

25 MR. TRAPP: I don't think I have any objection,

1 Judge.

2 THE COURT: Then it will be received.

3 Q. Mr. Webber, when was the last bargaining session you
4 attended between 639 and Daycon?

5 A. July 13, 2010.

6 Q. Where was that session held?

7 A. At the Federal Mediation Office, downtown D.C.

8 Q. Who was present for the union at that meeting?

9 A. The President, Tommy Ratliff, John Gibson,
10 secretary/treasurer, and myself and the bargaining committee.

11 Q. Who was on the bargaining committee?

12 A. Eugene Brown, Mike Renteria and Tom Geris.

13 Q. Who was there for the employer?

14 A. J. Crupin, Paul Rosenberg, John Poole and Jodie Kendall.

15 Q. Was there anyone else present at that meeting?

16 A. Federal Mediator, Gary Eder.

17 Q. Okay. Mr. Webber, from the very beginning of that
18 meeting, please tell me what happened when you arrived?

19 A. When we arrived we were, we met Gary Eder and he put us
20 into a room which was going to be the bargaining room, and told
21 us that the employer was down the hall in a separate meeting
22 room.

23 Q. What happened then?

24 A. We had a brief discussion and he asked us if we were ready
25 for the company to come in, and we said yes.

1 Q. And what happened then, Mr. Webber?

2 A. The company did come in.

3 Q. Okay. I'm going to show you a document that was
4 introduced at the underlying administrative trial as General
5 Counsel Exhibit 45. Do you recognize this document, Mr.
6 Webber?

7 A. Yes.

8 Q. What is this document?

9 A. Notes that I had taken during the course of that meeting.

10 Q. Now, you testified at the administrative trial about this,
11 but what happened when you got into the meeting with the
12 employer's side?

13 A. Mr. Crupin had opened up with a statement, a snide remark
14 that we did we want to be direct or did he we want him to
15 bullshit us.

16 Q. Was there a respond?

17 A. Tommy Ratliff told him just, let's get into negotiations.

18 Q. And what happened then?

19 A. J. Crupin made the statement that the company considered
20 this to be an economic strike and that they were prepared to
21 litigate it for years if necessary.

22 Q. And what happened then, Mr. Webber?

23 A. I believe shortly after that we caucused, the union
24 caucused.

25 Q. Did Mr. Crupin mention anything about waiving rights, not

1 waiving any rights?

2 A. Yes.

3 Q. What do you recall Mr. Crupin saying?

4 A. That they, they're not going to waive any of their rights.
5 Based on their position it was an economic strike and, again,
6 that they were prepared to litigate it for however long it
7 takes.

8 Q. All right. Now, you said that the union caucused?

9 A. Yes.

10 Q. What is a caucus, Mr. Webber?

11 A. We -- The company left and then it was just the union left
12 for discussion.

13 Q. And what happened then?

14 A. We had reviewed some of our proposals of what we were
15 willing to amend and submit to the company. Everybody was in
16 agreeance. We called the company back through Gary. Gary
17 brought them back and we verbally proposed some modified
18 proposals.

19 Q. How long was that caucus.

20 A. Probably ten or 15 minutes.

21 Q. What were your proposals that you made to the employer?

22 A. A five year progression or five year contract, five year
23 wage progression. We changed our position on the union
24 pension, to implement it in the fourth year of the agreement
25 rather than the first year of the agreement, and we also

1 lowered our wage from 65 cents per hour to 55 cents per hour.

2 Q. Did you receive a response?

3 A. After we proposed that verbally, the company caucused and
4 within a few minutes they were back and their response was we
5 had their offer and that they weren't willing to counter these,
6 amend them or listen to them.

7 Q. Did Mr. Crupin say anything else?

8 A. No.

9 Q. To clarify, was Mr. Crupin the lead negotiator for the
10 company?

11 A. Yes.

12 Q. When there was a response on July 13th, did the response
13 come from Mr. Crupin?

14 A. Yes.

15 Q. And what took place after Mr. Crupin give you his
16 response?

17 A. The union caucused.

18 Q. And what took place in that caucus, Mr. Webber?

19 A. We were trying to see what needed to be done to proceed
20 forward. We had already at that time been made aware that the
21 Labor Board was going to go to complaint on our charges. We
22 felt like the company was trying to get us to waive the white
23 flag and concede that this was an economic strike and that the
24 only way the company was willing to proceed forward was for us
25 to accept that. We weren't willing to accept the fact that it

1 was an economic strike.

2 Q. Did you communicate anything to the employer?

3 A. We had asked Gary Eder, the mediator, to go down the
4 hallway and let them know that we are at a loss as to how to
5 proceed at that moment, that we were going to have to get some
6 other entities involved, and that we wanted to know what their
7 position was on our initial offer for everybody to return to
8 work.

9 Q. Did you receive a response?

10 A. Gary Eder returned to us and the position was that the
11 company would be willing to sit down and negotiate who went in,
12 how many would be able to return to work. They still wanted to
13 conduct it as an economic strike.

14 Q. Was your understanding that they were not going to return
15 everyone to work?

16 A. Yes.

17 Q. Mr. Webber, there was a second page to that document and
18 I'd like to draw your attention to the last two lines there.

19 A. Yes.

20 Q. What were you referring to in your notes?

21 A. Well, the one is economic distress was part of the
22 company's best offer, their economic distress clause. We had
23 discussed that and the bottom line was everyone return to work
24 and that was our position based on our unconditional offer to
25 return.

1 Q. Was that the most important issue for you at the time?

2 A. Yes.

3 Q. What took place after you received word back from Mr.
4 Crupin about your clarification on your unconditional offer?

5 A. Well, after he received, I believe it's as I stated that
6 we had Gary Eder go down the hall and ask what was the position
7 was. We got it from Gary Eder and that session was basically
8 over with.

9 Q. Mr. Webber, I'm going to show you a document that was
10 introduced at the underlying administrative matter as General
11 Counsel Exhibit 59. Are you familiar with that document, Mr.
12 Webber?

13 A. Yes.

14 Q. What is this document?

15 A. It's a letter that I had sent to J. Crupin on July the
16 23rd regarding Daycon's failure to bargain in good faith and
17 threats of litigation.

18 Q. I'm going to refer you to the second page of this
19 document, Mr. Webber. Do you see the signature there?

20 A. Yes.

21 Q. Whose signature is that?

22 A. Tommy Ratliff.

23 Q. Who is Tommy Ratliff?

24 A. He's the President of 639.

25 Q. Is Tommy Ratliff your boss?

1 A. Yes.

2 Q. Mr. Webber, I'm going to direct you to the paragraph that
3 begins "Nevertheless the company," that paragraph.

4 THE COURT: We can't see that on the screen.

5 MR. MARSHALL: Thank you, Your Honor.

6 A. Okay.

7 Q. Mr. Webber, I'm going to direct you to the sentence
8 "Having caused the strike because of its illegal declaration of
9 impasse and unilateral implementation, Daycon is seeking to
10 reap the benefit of its unlawful conduct by forcing the union
11 to accept its February proposal." Do you know what Mr. Ratliff
12 was referring to?

13 A. In which part of the sentence, the February proposal or
14 the unilateral implementation?

15 Q. Reap the benefit.

16 A. That was where we believed the company had violated the
17 law. We were under the -- we understood that the NRB was going
18 to Complaint and we believed that they wanted to continue
19 negotiating with us, accepting the fact that it's an economic
20 strike even though it's been, they've been charged with an
21 unfair labor practice strike.

22 Q. I'm going to direct your attention to the next sentence
23 Mr. Webber, specifically the phrase "Your leverage has as
24 increased over the union." Now, you were the union's lead
25 negotiator in these contract negotiations. Could you describe

1 what your perspective was regarding leverage at this time?

2 MR. TRAPP: Judge, I might just interject an
3 objection there as to any speculation about what was in
4 Mr. Ratliff's mind. I didn't mind Doug testifying about these
5 things, but as far as it pertains to this letter, I just have
6 to lodge an objection for the record.

7 THE COURT: Okay. Well, how it was perceived or
8 understood by the receiving end has to be based on what's here
9 and not what was in his mind. I'm not sure, I don't know what
10 the point is, but you can go ahead.

11 Q. From your perspective, Mr. Webber, what was the leverage?

12 A. We believed at the time, and still do, that the company
13 had violated the Act and that because of that and based on that
14 they wanted to continue bargaining slowly on their terms and
15 have us accept the fact to continue negotiations that it was an
16 economic strike and not an unfair labor practice strike.

17 Q. I'm going to show you another document in one moment, Mr.
18 Webber. I just need to get it. Mr. Webber, this document was
19 introduced at the underlying administrative trial as Respondent
20 Exhibit 32. Mr. Webber, have you seen this document before?

21 A. Yes, I've seen it.

22 Q. What is this document?

23 A. It's a response to Tommy's July 23rd letter from, I
24 believe, J. Crupin.

25 Q. I'm going to direct you to the first paragraph, Mr.

1 Webber, the last sentence of the first paragraph.

2 A. Yes.

3 Q. Specifically the phrase "When that decision is in the
4 union's hands."

5 A. Yes.

6 Q. Do you agree with that statement?

7 A. No.

8 Q. Please describe?

9 A. We had offered for all the spouses to return to work on
10 July 2nd, to return, made the offer July 2nd to return to work
11 on July 6th, so we pretty much believed that it wasn't in the
12 union's hands, it was in the company's hands.

13 Q. I'm going to refer you to the next paragraph, Mr. Webber.
14 If you could take a moment to look at that, please, and look up
15 when you're finished.

16 A. Okay.

17 Q. Now, is that paragraph consistent with Daycon's contract
18 offer from February 18th?

19 A. No.

20 Q. What is inconsistent with that?

21 A. The last two sentences.

22 Q. Please describe.

23 A. That states that the health insurance cost would remain
24 constant and furthermore no take-backs are proposed. There is
25 an issue at the bargaining table. The union's possession was

1 that the company had agreed that the health care costs would
2 remain constant, and then subsequent to this I believe the
3 company, I know the company did send a letter to the homes, to
4 the families of, stating that the health care cost would remain
5 the same for the first year of the agreement.

6 Q. Now, when the parties met on July 13th, Mr. Webber, did
7 Mr. Crupin offer to change any of the employer's proposals?

8 A. No.

9 Q. I'm going to refer you to the second page of this
10 document, Mr. Webber. Specifically the last line or phrase, I
11 would say, or clause. "You will see our best offer is truly
12 acceptable and we can move forward." At the time of this
13 letter, which was dated July 27, 2010, what was your
14 understanding of Daycon's best offer?

15 A. They had given us a best offer in February. There was
16 some discussions after February that we didn't know if that was
17 their best offer or not.

18 Q. What were the terms of the best offer as best you can
19 remember?

20 A. Economic distress clause, 40 cents an hour across the
21 board, 20 cents additional opt for anybody that's in
22 progression. I know there was two other bullet points. I
23 can't think of them right now.

24 Q. Now, was it your understanding at this time that those
25 terms would include employees going back to their jobs?

1 A. Yes.

2 Q. Immediately?

3 A. Could you rephrase the question again.

4 Q. Sure. At this time, July 27th, was it your understanding
5 that the company was proposing the same terms that it had
6 proposed on February 18th and that employees would all go back
7 to their jobs?

8 A. I'm not really sure. We --

9 Q. I'll ask it.

10 A. Very good.

11 Q. Was Mr. Crupin's offer acceptable to you?

12 A. No.

13 Q. Why not?

14 A. Because he basically wanted us to accept his position that
15 it was an unfair labor, or that it was an economic strike and
16 the only way we'd continue bargaining would be to accept that
17 he was, that the company was right in believing that it was an
18 economic strike.

19 Q. From your perspective has that overshadowed the parties
20 collective bargaining negotiations?

21 A. Yes.

22 Q. Have the parties met to bargain for a new contract since
23 July 13th?

24 A. No.

25 Q. Have you requested to bargain with the company?

1 A. No.

2 Q. Why not?

3 A. Our position pretty much is what it was in July where how
4 do you bargain when the company is declaring this to be an
5 economic strike and we've had the proceedings and the trial in
6 November, and our position has been and still is that it's an
7 unfair labor practice strike and the company has demonstrated
8 here that the only way that they're willing to sit down and do
9 anything would be for us to concede that it was an economic
10 strike and proceed forward under those terms.

11 Q. I'm going to show you another document, Mr. Webber, that
12 was introduced at the underlying administrative trial as
13 General Counsel Exhibit 46. Do you recognize this document,
14 Mr. Webber?

15 A. Yes.

16 Q. What is this document?

17 A. It's a letter that was sent to J. Crupin on October 1,
18 2010.

19 Q. I'm going to refer you to the second page of this
20 document, Mr. Webber. Specifically, Mr. Webber, I'm going to
21 refer you to the last paragraph.

22 A. Okay.

23 Q. And the sentence or clause, I should say, that reads
24 "Local 639 is ready and willing to engage in bargaining to
25 resolve the outstanding issues." Is it your position that you

1 need the employees to go back to work in order to get back to
2 the bargaining table?

3 A. We're always welcome to go back to the bargaining table.
4 We look for the outcome to be for all the employees to go back
5 to work.

6 MR. MARSHALL: Thank you, Mr. Webber. I don't have
7 any questions. Your Honor, I actually in the event, and Mr.
8 Trapp and I had discussed this before, in the event that
9 Mr. Poole testifies into subjects that he may or may not go
10 into, I may want to call Mr. Webber for brief rebuttal.

11 THE COURT: Okay.

12 MR. MARSHALL: Thank you.

13 THE COURT: Mr. Trapp.

14 MR. TRAPP: Thank you, Judge. Try to be as organized
15 as I can.

16 CROSS EXAMINATION

17 BY MR. TRAPP:

18 Q. Good morning, Doug.

19 A. Good morning.

20 Q. And less the Court think that I'm slighting you by just
21 calling you by your first name, you and I have, we have been
22 sparring partners before, and we have a little understanding, I
23 guess, between us that you don't mind if I call you Doug,
24 right?

25 A. Not a problem.

1 Q. Okay. I want to cover some of the things that you talked
2 about on direct when Mr. Marshall was questioning you. One of
3 the things that you said was that the strike, when Mr. Ratliff
4 made the decision to go to strike, this was because of the ULPs
5 on April 22nd and 23rd, right?

6 A. Correct.

7 Q. But I believe at the administrative hearing, if I remember
8 the testimony right, it was pretty clear that there was no talk
9 of a strike just based on the impasse, on the Declaration of
10 Impasse, is that right?

11 A. It was based on the conduct of the 22nd and 23rd.

12 Q. Okay. I'll tell you my recollection of the administrative
13 hearing and you tell me if I'm wrong about it, okay. Is that
14 all right?

15 A. Sure.

16 Q. Okay. I don't remember if it was you or Mr. Ratliff or
17 Mr. Gibson, but all three of you were questioned about it, and
18 when Mr. Brown called on April 23rd and said that Mr. Poole had
19 implemented the 40\60, do you remember that?

20 A. Yes.

21 Q. And that was how you learned that the wage increase had
22 been implemented, correct?

23 A. Correct.

24 Q. And I think you testified that you were kind of shocked by
25 that, right?

1 A. Yes.

2 Q. And then you had a meeting with Mr. Ratliff and Mr. Gibson
3 to discuss what to do?

4 A. Correct.

5 Q. And among the three of you, it was talked about how you
6 really didn't have any other choice now but to go on strike,
7 right?

8 A. The decision was made to strike, yes.

9 Q. And that was only after the implementation?

10 A. Correct.

11 Q. And so prior to then you hadn't been talking about going
12 on strike with Mr. Ratliff and Mr. Gibson just based on the
13 impasse?

14 A. Implementation.

15 Q. Right.

16 A. We received a letter late in the afternoon on a Thursday.
17 Friday is when I got word of the implementation. That's when
18 the discussions about strike had started.

19 Q. Yeah. I just want to be clear on it though. When you got
20 the letter about impasse on April 22nd, you responded with your
21 own letter, right?

22 A. Um hum.

23 Q. And you didn't have a meeting to say "Hey, let's all go on
24 strike" at that point?

25 A. No. There was discussion, but it wasn't -- we weren't --

1 strike wasn't imminent.

2 Q. There was discussion about strike?

3 A. There was a discussion about the letter that we received
4 on the 22nd.

5 Q. Okay. Well, stick with me on this just for a minute and
6 then I'll move on. When you got the letter on April 22nd
7 declaring impasse, you just responded with a letter. You don't
8 get together and say that you with are going on strike because
9 of that, right?

10 A. We responded by letter, yes.

11 Q. And you didn't get together and say you're going to have a
12 strike?

13 A. I don't believe so.

14 Q. Okay. And so the only time that you talked about going on
15 strike, and I'm not saying whether it was or wasn't. I'm just
16 saying this was the testimony before the ALJ, was that the
17 discussion of strike was a direct result of Mr. Brown informing
18 you that the 40\60 wage increase had when implemented, right?

19 A. I was informed by several people that morning that the
20 company implemented their best offer.

21 Q. And only then did you have the discussion about the
22 strike. At least that was the testimony before the ALJ, right?

23 A. I believe so.

24 Q. Okay. Now, you said also on direct that the best offer at
25 that time wasn't agreeable, right?

- 1 A. Correct.
- 2 Q. And it's still not agreeable, is it?
- 3 A. Pardon me?
- 4 Q. You still don't agree with it, do you?
- 5 A. No.
- 6 Q. You don't agree with any part of it, right?
- 7 A. I believe that we had movement to make it. The union was
8 always prepared to make more movement.
- 9 Q. But you're not willing to accept the company's offer, are
10 you?
- 11 A. Correct.
- 12 Q. In any respect, correct?
- 13 A. I don't know.
- 14 Q. Well, think about it.
- 15 A. We had discussions in January, I'm sorry, July, and based
16 on those discussions, we're up in the air as how do we proceed
17 with negotiations.
- 18 Q. And in July the company held firm with its prior offer,
19 right?
- 20 A. Right.
- 21 Q. And that was unacceptable to you in July, right?
- 22 A. At that time, yes.
- 23 Q. And have you changed your mind since then?
- 24 A. No.
- 25 Q. So it's still unacceptable to you?

1 A. Pretty much so, yes.

2 Q. Is there any doubt about that?

3 A. I wouldn't believe so, no.

4 Q. Now, you talked a little bit about the terms that were
5 implemented and I want to follow up on that.

6 You mentioned, I couldn't jot it all down, but I
7 think you mentioned something about some four bullet points or
8 that there were several terms that were implemented, right?

9 A. Yes.

10 Q. Now, in an Affidavit to, that you gave to the Board,
11 didn't you tell the Board that you don't know if the employer
12 implemented its complete offer or just bits and pieces is of
13 it. Do you remember anything like that?

14 A. Because we really didn't know what the company
15 implemented. They said their best offer.

16 Q. Okay.

17 A. We didn't know that the package.

18 MR. TRAPP: And, Judge, I'm not sure how this works
19 in a courtroom with the technology. This is an Affidavit that
20 I was given by Mr. Marshall and we used them at the
21 administrative hearing but they weren't admitted as exhibits
22 and I don't just want to throw it up on the screen and shock
23 everybody with it.

24 THE COURT: It depends on the purpose for which you
25 are using it.

1 MR. TRAPP: I would just show -- It's an Affidavit
2 from Mr. Webber, and I would show him what it says.

3 THE COURT: Are you using it because you want to use
4 it to refresh his recollection --

5 MR. TRAPP: Yes.

6 THE COURT: -- or are you using it because you think
7 it's a prior inconsistent statement or what? Do you want to
8 refresh his recollection, just show it to Mr. Marshall and then
9 show it to the witness, without putting it up on the screen. I
10 don't have to see it if that's what you -- if you're using it
11 to refresh a witness's recall, just show it to the witness.

12 MR. TRAPP: Okay.

13 Q. Okay. Now, Doug, you see there on the first page of that
14 Affidavit, down about line six to eight?

15 A. Okay.

16 Q. And you see what that says there?

17 A. Yes.

18 Q. So you told the NLRB that you didn't know if the employer
19 implemented its complete offer or just bits and pieces of it,
20 right?

21 A. Correct.

22 Q. And you also told them, to be clear, you do know that they
23 implemented their wage proposal?

24 A. Correct.

25 Q. And that's your understanding, right?

1 A. Correct.

2 Q. So you know they implemented their wage proposal. The
3 rest of their offer, you don't know for sure?

4 A. Correct.

5 Q. Okay. I'll get that back from you. And the only thing
6 that Mr. Brown told you, or let me back up. Your knowledge of
7 what was implemented was what was told you by Mr. Brown?

8 A. At that time, yes.

9 Q. Mr. Brown told you they implemented the 40\60 wage
10 increases, right?

11 A. Correct.

12 Q. And he didn't tell you anything else?

13 A. Not that I recall.

14 Q. Okay. Now, let's look at the GC 81. Do you have a copy
15 of that, Doug?

16 A. Yes.

17 MR. TRAPP: This one I can put up then I guess,
18 because it's already admitted.

19 THE COURT: Um hum.

20 Q. So these are Letters of Resignation that you got right
21 around when the strike began, is that right?

22 A. Yes.

23 Q. Looks like some of them, look at the first page, the date
24 on that is April 26th, right, from Kevin Nicholson?

25 A. Yes.

- 1 Q. Faxed in from New Dawn.
- 2 A. Yeah.
- 3 Q. And that's the day the strike began?
- 4 A. Yes.
- 5 Q. And on page two there, the date is April 25th, it looks
6 like. Is that right?
- 7 A. The date of the letter, yes, is April 25th.
- 8 Q. That's the day before the strike, right?
- 9 A. Yes.
- 10 Q. This next one is April 27th from Mr. Holder. Next one is,
11 is this William Davis, is that the guy that you didn't know?
- 12 A. I believe so, yes.
- 13 Q. The next one is April 27th.
- 14 A. He had written in, yes. We received it on May 5th.
- 15 Q. Okay. Vincent Rogers, April 25th. Looks like received on
16 April 27th?
- 17 A. Which one is Vincent Rogers?
- 18 Q. I'm just flipping through page by page. I'm sorry. Do
19 you see that one, Dough? You can look on the screen. I got it
20 up there for you.
- 21 A. Okay.
- 22 Q. Well, I think I do. Now I do. How's that?
- 23 A. Okay.
- 24 Q. This one is dated April 25th, received April 27th?
- 25 A. Correct.

1 Q. Two pages. These are all pretty much the same, by the
2 way. When I looked through them I can't represent they're word
3 for word, but they look pretty much verbatim for each letter,
4 right?

5 A. Similar, yes.

6 Q. Then this one from Oliver Baker is dated April 27th,
7 received May 7th?

8 A. Correct.

9 Q. This, what's this, Abdullah Mohammad, or is this, is this
10 two people or just one person, do you know, or is that just
11 Abdulla Mohammad's signature above that, do you know, Doug?

12 THE COURT: We don't see a signature on that scene.

13 Q. It's the page that looks like this on the top, received
14 April 29th, and down at the bottom there is a scrawl and then a
15 print and I guess that's just probably a signature and then a
16 printed name?

17 A. That's your guess.

18 Q. Okay. You don't know --

19 A. It's hard to tell.

20 Q. You're not familiar with Mr. Abdulla Mohammad's signature,
21 I guess?

22 A. No. No.

23 Q. Okay. This next page is Alvin Brokenborough, Jr.,
24 April 29th, received May 1st?

25 A. Yes.

1 Q. Carlton Carter, same thing, April 29th, May 1st?

2 A. Yes.

3 Q. Gerald Jackson, looked like May 14th. I guess that's a
4 couple weeks after the strike started, right?

5 A. Correct.

6 Q. And then Steven Walker is June 4th. That's about a month
7 and a week after the strike started, I guess.

8 A. Correct.

9 Q. And this Steven Walker one, looks like that's the last one
10 you got, right?

11 A. To the best of my knowledge, yes.

12 Q. So out of these 11, 12 resignations, they all came
13 primarily right around when the strike started, right?

14 A. Within a few days, yes.

15 Q. And so would you agree with me that these were in response
16 to the union's decision to call a strike?

17 A. No, I couldn't agree with that.

18 Q. Had you talked with any of those individuals about why
19 they resigned?

20 A. Not that I recall.

21 Q. Did you expect anybody to resign when you called the
22 strike?

23 A. We always expect that there will be a few.

24 Q. So was this anything unusual for calling a strike and some
25 of the people will decide not to honor it?

1 A. It's not that unusual. We expected that some would.

2 Q. Anything usual about the number of people here?

3 A. Percentage wise it's a little higher than what is normal,
4 but consistency, we dealt with the initial impact which trailed
5 off afterwards. Usually it goes in reverse, everybody honors
6 and then trails off as the strike goes on.

7 Q. Now, I think the testimony before the ALJ about the time
8 leading up to the strike was that the decision was made by Mr.
9 Ratliff, and it was after a discussion with yourself and Mr.
10 Gibson, right?

11 A. Correct.

12 Q. And the employees didn't find out about the strike until
13 they showed up for work on that Monday morning of April 26th,
14 right?

15 A. Correct.

16 Q. Do you think that, or do you have any knowledge that
17 that's why any of the employees might have resigned, that they
18 didn't know about it?

19 MR. MARSHALL: Well, I'm going to object to the
20 extent that it asked for --

21 THE COURT: Speculation. I'll sustain it.

22 MR. TRAPP: I'll move on, Doug.

23 Q. On July 6th, after you had made this offer to Mr. Crupin,
24 did everybody show up for work?

25 A. People showed up in the morning, yes.

1 Q. Was everybody --

2 A. I don't know if everybody showed up, but people showed up
3 as normal.

4 Q. Why wouldn't everybody have shown up if they were
5 expecting to go to work that day?

6 MR. MARSHALL: Objection, Your Honor. Speculative as
7 to why someone else that is not Mr. Webber would or would not
8 show up to work.

9 THE COURT: I'll overrule this one.

10 A. I would say most people that were on the picket line
11 showed up as normal. The picket line still had a majority of
12 people showing up.

13 Q. And there was no testimony before the ALJ that anybody
14 actually attempted to go to work that day, right?

15 A. Not that I'm aware of.

16 Q. And, in fact, I got to confess, Doug, I don't know where
17 it was, but tell me if I'm wrong about this, but I thought in
18 one of your Affidavits somewhere, or in your testimony that you
19 agreed that nobody actually tried to go into work that day.

20 You just made the decision not to cause a ruckus?

21 A. They showed up for work that day and nothing had changed.
22 We didn't get a response from the company saying "Yes,
23 everybody is to report to work as usual. When they did report
24 to work they were still met with the security guards and the no
25 trespassing signs that were put up immediately after the strike

1 had started. So when they showed up to report to work nothing
2 had changed and we had not got an invitation from the company
3 to come back to work.

4 Q. And, in fact, you were still emailing back and forth with
5 Mr. Crupin about getting together to bargain, right?

6 A. Correct.

7 Q. Now, you testified a little bit about the picket line, and
8 I believe you said at the beginning of the strike you were out
9 there every day, is that correct?

10 A. Pretty much so.

11 Q. And most everybody else was too, right?

12 A. Majority, yes.

13 Q. And that held true, I think you said, through May you had
14 a pretty strong presence at the picket line?

15 A. Pretty much, yes.

16 Q. You testified on direct that recently you only go to the
17 picket line two or three days a week now, right?

18 A. Correct.

19 Q. And you do it when your calendar permits, right?

20 A. Correct.

21 Q. Or when your calendar allows it, I think you said. If
22 you're not out there, how do you know if other people are out
23 there or not?

24 A. We, based on the sign-in sheets and based in some
25 communications with one or two people that are there

1 consistently, daily.

2 Q. So there are some people that are there pretty
3 consistently, but apparently there are others that are not
4 their consistently, right?

5 A. Correct.

6 Q. And some people might come and go, come for a couple hours
7 than leave?

8 A. I'm sure that's happens.

9 Q. Okay. Is this anything unusual about that compared with
10 other strikes that you're involved in now or other strikes that
11 you've participated in in the past?

12 A. Sometimes they do do that. Sometimes they show up for a
13 couple hours in the morning, sometimes they come back a couple
14 hours in the afternoon.

15 Some of them are looking for jobs and have other
16 things to attend to. Majority of them did initially try to put
17 in as much time as they could.

18 Q. Just like you did, right?

19 A. Just like I did.

20 Q. I mean, you probably had other things to attend to during
21 April, May and June but you made a point to go out to the
22 picket line, right?

23 A. Not as serious. As the summer wore on I had, I mentioned
24 earlier, approximately ten other companies and through the late
25 summer and continuing now, I mean, very much the majority of my

1 time is contract negotiations with several other companies. I
2 didn't have that at the onset of the strike.

3 Q. And this is not to cast any aspersion at you, Doug, but
4 frankly other things have become more pressing than going out
5 to the picket line every single day, right?

6 A. No, I wouldn't agree with that.

7 Q. Well, I guess the proof is in the pudding, right, because
8 you're only going out there two or three days a week correct?

9 A. I would say that the picket line was under control the
10 best that it could be with the people that were out there. We
11 had picket line captains that try to keep the picket line under
12 control, and they were trying to stay in contact with me and I
13 was trying to supervisor it from other locations.

14 Q. But, again, to my point, in April, May and June you didn't
15 supervise it from other locations. You were out there every
16 day, right?

17 A. At first I did. I was out there every day but not for the
18 full days, yes.

19 Q. Okay. So it's just sort of dwindled a little bit as time
20 went on, right?

21 A. Yes.

22 Q. And that's kind of happened with the picketers too, right?

23 A. It's dwindling, yes.

24 Q. Okay. And I don't hear you testify, so I'll just ask you
25 directly, you don't have any reason to believe that them not

1 being there every day as they used to means that they no longer
2 support the union, correct?

3 A. I don't know.

4 Q. Exactly. You don't know why they're not there, right?

5 A. I believe that it's worn on them. I believe that time is
6 warning them down. They're trying to pick up and trying to
7 decide what's going to happen with the rest of their lives.

8 Q. And have they told you that, that that's the reason
9 they're not there?

10 A. They have alluded to that, yes. That some, they're out
11 there actively looking for other jobs. They didn't they when
12 this is going to end. They know that they've got families to
13 support and they're doing what they need to do to support their
14 families.

15 Q. Sure. And you don't blame them for that, right?

16 A. No.

17 Q. And you don't think that that means that they don't
18 support the union, correct?

19 A. I don't know, because some of them are getting jobs and
20 some of them are not. You know, I know some of the people that
21 are not participating to the levels that they were initially or
22 have not found other jobs, so they're not showing up.

23 Q. Well, I guess let's just do it by analogy. You're not
24 showing up every day. You still support the union, right?

25 A. Very much so.

1 Q. So it's possible, in fact, you don't have any knowledge to
2 the contrary, that these other people who are not showing up
3 every day also support the union?

4 A. I think it's comparing apples with oranges. I have a
5 designated job with duties. This is their job. This is where
6 they work. This is where they're on strike. If they don't
7 have other things pressing, they should be on the picket line.

8 Q. Well, then, why don't you blame them for not being there?

9 A. I think they --

10 Q. If that's their job?

11 A. I think they should be there.

12 Q. Well, I asked you a moment ago if you blamed them for not
13 coming, and you said "no," you don't.

14 A. I think they should be that, but that the support has
15 trailed off.

16 Q. Okay. And should they be there because, are you paying
17 them to be there?

18 A. They're getting a strike benefit, yes.

19 Q. And are they getting the strike benefit whether they're
20 there or not?

21 A. Some of them have lost their strike benefits.

22 Q. How do you determine that?

23 A. Some of them have ceased coming out 100 percent. Some of
24 them have found temporary employment at other locations.

25 Q. Well, if they have a family to support and they find

1 temporary employment somewhere else to make some money to do
2 that, I'll ask you again, do you blame them for that?

3 A. If they go to work somewhere else?

4 Q. Sure.

5 A. No, I don't blame them for that.

6 Q. And that doesn't mean that they don't support the union,
7 right?

8 A. I don't know how they level their support with the union
9 as far as that goes. I know that some of them that have gone
10 to work at other locations, I don't hear from them any more.

11 Q. Okay. Well, just let me ask you directly. Maybe we can
12 cut through some of this then. Do you have any reason to
13 believe that any of those employees do not support the union
14 any longer?

15 A. Yes.

16 Q. Okay. Based on what?

17 A. Based on the level of support, based on some discussions
18 on the picket line. Based on that they don't know what use it
19 does to be out there. They don't know the purpose of it any
20 more. They have lost the -- it's gone on for so long they've
21 lost the initial drive as to what are they trying to accomplish
22 by being out there.

23 Q. And that's, again, it sounds like it boils down to you're
24 basing that mainly on their showing up or not showing up on the
25 picket line, right?

1 A. It has a lot to do with it, yes.

2 Q. What else would I add to that list if I were making a list
3 of it?

4 A. Discussions as to they have to try and do some other
5 things. They have personal issues. People have got some other
6 issues why they can't be out there.

7 Q. Who have you had these discussions with?

8 A. There's a few.

9 Q. Who are they?

10 A. Eugene Brown, for example.

11 Q. Well, you don't think Eugene Brown doesn't support the
12 union?

13 A. No.

14 Q. Okay. Well, let's move on to somebody else. I'm talking
15 about who do you think doesn't support the union now and then
16 tell me why.

17 A. I'd have to look at a list, but I'm going to say Darren
18 Koger, Horace Griffin, John Smith. There's a lot of people
19 that were active at the very beginning that I don't see their
20 faces now, and the sign-in sheets don't reflect that they come
21 out the way they used to.

22 Q. And so you're not basing it on a conversation that you had
23 with them where they told you they don't support the union.
24 You're basing it again on the fact that they haven't signed a
25 sign-in sheet, or you don't remember seeing them at the picket

1 line?

2 A. That's large part of it, yes.

3 MR. TRAPP: Hang on one second. Bear with me, Judge.

4 THE COURT: Um hum.

5 Q. All right. Do you have a copy of the sign-in sheets up
6 there with you, Doug, number 82?

7 A. Yes.

8 Q. Now, I just got this yesterday and it's a whole bunch of
9 stuff, so I won't belabor it too much. But let me just see if
10 I can take you through a couple of these and get a little
11 evidence here.

12 Now, I went through and just picked out some sort of
13 random kind of dates, because I didn't have a ton of time here.
14 But, well, actually, if you turn with me, I don't even know how
15 far in it is. It's listed chronologically, do you see that?

16 A. Correct.

17 Q. Starting from April 26th. So, if you turn with me to,
18 looks like, well, there's a couple sign-in sheets here that are
19 just sort of like, look like blank sheets of paper, May 26th,
20 May 27th and May 28th. Do you see those? Actually they're
21 listed after the May 31st to June 6th block page of Exhibit 82.
22 Do you see those, Doug? They kind of stand out from the other
23 group?

24 A. Which ones are they now?

25 Q. If you turn about -- Let me count it. Looks like it's

1 about 21 pages in, although there's a couple blanks in here and
2 I don't know if that's supposed to be the case or not.

3 Actually, you know what. Maybe I could just throw it up on the
4 screen for you. Looks like that one.

5 A. Okay.

6 Q. All right. So are you with me on that one now?

7 A. Yes.

8 THE COURT: Would you just move that microphone with
9 you.

10 MR. TRAPP: I'm sorry.

11 THE COURT: Thank you.

12 Q. All right. So, May 26th then, looks like there's 17
13 people on that list, right?

14 A. Correct.

15 Q. You can turn the page with me. May 27th there's 18. May
16 28th, looks like 11?

17 A. Okay.

18 Q. That might have been right around Memorial Day or
19 something, I bet. So, there, at the end of May there are
20 several days there where there are less than 20 people out on
21 the line, right?

22 A. This, that week there was a, it appears to be some
23 confusion whether the actual sign-in sheet was going to be
24 there, and somebody had, because the sign-in sheet wasn't
25 there, had started taking a sign-in sheet of their own. And

1 then as the week progressed, if you go back a couple pages
2 prior to, that was the week of May 24th through May 28th where
3 people did sign in on the regular sign-in sheet.

4 Q. Now, it looked like, and on these sign-in sheets there
5 were several, and I won't take the time to dive through the
6 record to see if you agree with me, there were several places
7 where it looks like signatures kind of don't match line from
8 line, and there's some with initials next to them. Looks like
9 other people signed in for certain people. Is there anything
10 unusual about that?

11 A. I'm not sure what you're talking about.

12 Q. All right. Let me see if I can find an example for you
13 here. Actually, here's one. If you just turn to page two of
14 the exhibit and you see there, go down to Gerald Jackson, about
15 five lines down?

16 A. Yes.

17 Q. Do you see it says "LB" above those on the first two days
18 there?

19 A. Right.

20 Q. That's, I would guess that's Lynette Burton. Do you know
21 otherwise?

22 A. That's her initials, but I don't know if that's her.

23 Q. Do you think that she signed his name for him and put her
24 initials next to it?

25 A. Lynette was one of the picket line captains and, again,

1 depending on what time I can get out there and what time these
2 things are printed, there may have been people that put some
3 picket line duty in out there when the sheet was not there.

4 Q. Sure. My point is just that some people might sign in for
5 others, some people might not be there at the time. This list
6 would not be a hundred percent accurate?

7 A. I don't purpose to it to be a hundred percent accurate.

8 Q. Yeah. And I think you said it's like kept in a, did you
9 say a Port-a-Johnny or something?

10 A. Yes.

11 Q. And so, and you put it out there once a week?

12 A. Try to, yes.

13 Q. And so somebody could come in, I guess if they felt like
14 it, and sign their name for a whole week, right?

15 A. I'm sure somebody could.

16 MR. MARSHALL: I'm going to objection, Your Honor.
17 That's speculative.

18 THE COURT: Overruled.

19 Q. Somebody could do that, right?

20 A. I'm sure somebody could, yes. It was not under lock and
21 key.

22 Q. And, in fact, if they get the idea that their pay might be
23 based on it, they'd have a little bit of an incentive to do
24 that, wouldn't they?

25 A. I imagine they would.

1 Q. Now, for the, I tried to write down some of them on direct
2 that you were directly questioned about, but Adalberto, was it
3 Mendez, maybe?

4 A. Yes.

5 Q. And Rawle Daniels, Lynette Burton, Derrall Bridges, John
6 Smith, Mike Renteria. I think there were a couple that I
7 missed, but you were asked about each one of those and asked
8 the question "Do you see them as often as you used to?" and you
9 said "No" as to each one, right?

10 A. Yes.

11 Q. And have you spoken with any of those individuals about
12 their participation, or lack thereof, on the picket line?

13 A. Some of them.

14 Q. Who have you spoken with?

15 A. Darren Koger.

16 Q. That wasn't one that I asked you about.

17 A. I'm sorry. I thought you did.

18 Q. Adalberto, have you spoken with him?

19 A. On and off.

20 Q. And what has he told you?

21 A. He sometimes has car problems. They don't have the money
22 to repair cars and sometimes he can't make it to the picket
23 line. He's got other issues going on in his life that makes it
24 impossible for him to get to the picket line.

25 Q. So, do you think that he still supports the union?

1 A. I believe at this point in time if they really did support
2 the union, they'd find a way to be there.

3 Q. And now, I guess if you, at least for Adalberto, if you
4 flip with me here, let's go toward the end of that exhibit.
5 Let's look at, how about December. We'll just pick December.

6 Let's go to December 10th, or the week of
7 December 6th through December 10th. This was the week before
8 you had an Affidavit taken in this 10(j) proceeding, right?

9 A. Okay.

10 Q. Do you remember giving an Affidavit to the Board on
11 December 13th to support this 10(j) injunction proceeding,
12 Doug?

13 A. Yes.

14 Q. And so this sign-in sheet is from the week before that,
15 right?

16 A. Yes.

17 Q. Can you turn to Adalberto Mendez. He's on, well, I guess
18 I'll call it page 2 of that week. Put it on the screen. Do
19 you see him on there?

20 A. Yes.

21 Q. Looks like he signed in every day that week?

22 A. Looks like it.

23 Q. Let's turn over to -- Let's go to the week of maybe
24 December, let's go out a couple weeks. Flip over with me to
25 December 24th maybe, December 20th to 24th. There it is again.

1 Looks like he was there Tuesday through Friday and signed in
2 each of those days and even on Christmas Eve, right?

3 A. It appears, yes.

4 Q. So you don't have any reason to believe Adalberto doesn't
5 support the union, right?

6 A. These, the ones that you had pointed out are two months
7 old, so there's continuing, it didn't just drop dead over
8 night. There's a continued downturn on participation.

9 Q. Sure. Just like there is with you, right?

10 A. So Adalberto might have been there at that time,
11 consistently.

12 Q. And if we had a sign-in sheet that said Douglas James
13 Webber on it, you would have signed it every day the first
14 couple months, and the least couple months you wouldn't be
15 signing it ever day, would you?

16 A. That's correct.

17 Q. Would that mean you don't support the union?

18 A. No.

19 Q. Now, how about any of the rest of these names I gave to
20 you, Rawle Daniels, Lynette Burton, Derrall Bridges, John
21 Smith, Mike Renteria, any specific reason to believe that any
22 of them don't support the union?

23 A. When I'm out on the picket line, I have to, more so than
24 not, and Friday, last Friday was an example, where I had to
25 show up and tell the people they need to move the picket line

1 back in front of Daycon, get the picket signs out of their cars
2 and start wearing them.

3 It's when, when the level starts trailing off I have
4 to go out there and say "Where are you guys at? What are you
5 doing?" I didn't have those issues at the onset of the strike.
6 Everybody was out there, everybody participating in high
7 levels. Even when they're on the picket line now it's like
8 "Okay. I know it's cold, but let's get out of the cars. Let's
9 do what we're suppose to do out here."

10 Q. Is there anything specific about this picket that is,
11 makes it stand out in that regard from other strikes that
12 you've participated in?

13 A. Over 35 years of strikes that I participated in, the
14 people were on the picket line doing what they're suppose to
15 do.

16 Q. Every one of them, constantly?

17 A. Majority of them, yes.

18 Q. How many strikes have you participated in over the course
19 of your career?

20 A. There's been several strikes, but this is the longest I've
21 had.

22 Q. And this is the longest one. You've never had a strike
23 this long, right?

24 A. Correct.

25 Q. So you're sort of in uncartered territory as far as knowing

1 whether people are going to stick with it or not, right? You
2 don't have any experience to base it on is what I'm saying?

3 A. I've never been involved in a strike that took nine
4 months.

5 Q. Okay. Now, for those employees that I named then, have
6 you ever called them and asked them why they aren't out there?

7 A. When I see them on the line, usually on Fridays I see the
8 largest amount of them, and I do a weekly report or a weekly
9 update. I let them know what's going on, if there's anything
10 new to report out.

11 Q. And why on Fridays do you see the largest amount of them,
12 do you think?

13 A. That's when I issue the strike benefit checks.

14 Q. Now, tell me some of the criteria for getting a strike
15 benefit check. How do you know who to give it to and who not
16 to give it to?

17 A. Participation on the picket line.

18 Q. And how do you judge that?

19 A. How often they're out there.

20 Q. Based on how often they sign the sheet?

21 A. Pretty much so, yes.

22 Q. So, again, that supports my presumption before that
23 somebody who has incentive to sign that sheet as much as they
24 can, right?

25 A. I would think so, yes. Hopefully, they're being honest

1 about it.

2 Q. Now, if they're drawing unemployment they have a
3 responsibility as well to actively seek employment, right?

4 A. That's my understanding.

5 Q. And you don't fault them if they're out there seeking
6 other work, right?

7 A. No.

8 Q. And that might be a reason why some of them wouldn't be at
9 the picket line, correct?

10 A. Maybe.

11 Q. At least every day, at least as much as they used to,
12 right?

13 A. Pardon me?

14 Q. At least every day?

15 A. I know they've got other obligations to seek employment,
16 yes.

17 Q. And, so, for somebody that's not out there every single
18 day, they could still get their strike benefits check if
19 they're out there pretty regularly?

20 A. Well, I don't know how they're seeking employment. Again,
21 a lot of it any more it's a resume' on a computer at night
22 time.

23 Q. Well, that's why I'm asking you, like, do they have to do?
24 What's the criteria to get the strike benefit check? How often
25 do they have to be there? What's the cutoff?

1 A. It's a participation of some type of level where we know
2 people are doing, they're showing up, doing what they should be
3 doing, they're on the picket line. Other people that have left
4 and sought other employment or got other employment, we've had
5 to cut them off.

6 Q. Because they're getting money from somewhere else, right?

7 A. Well, they're in -- they're working somewhere else and
8 they're not participating on the picket line.

9 Q. Well, if they're working somewhere else, have you spoken
10 with them?

11 A. The ones that are left there, no.

12 Q. So you don't have any knowledge as to whether or not they
13 would return if they were offered a place at Daycon or not,
14 right?

15 A. I knew that when they left, and I knew that if a point in
16 time when this gets resolved they'll have to make a decision
17 whether they want to stay where they're working now or make a
18 choice to come back to Daycon.

19 Q. And you don't know what that decision would be for any
20 particular employee, right?

21 A. No.

22 Q. Now, let's go back to 82 for a minute. Flip with me, if
23 you would, Doug, to, let's say July 2nd. How about that.

24 That's the day that you sent that email to Mr. Crupin, right?

25 A. Yes.

1 Q. So, on July 2nd, I did a count of this and you can flip
2 through the pages if you want and verify that I'm right. I
3 can't swear to it, but on July 2nd I counted there was 23
4 people that signed in that day. Does that sound about right to
5 you?

6 A. It's probably correct.

7 Q. Now, flip with me to July 13th, and I think actually it
8 says June, because if you look at each of these boxes on here,
9 there was a misprint in the July numbers in like the second and
10 third, the Tuesdays and Wednesdays, they all say June but it's
11 really July, right?

12 A. I'm sorry. Which date are you on now?

13 Q. Flip up to what would be July 13th, but it says June 13th,
14 but it's a couple pages behind where we just were.

15 A. Okay.

16 Q. Do you see that?

17 A. Yes.

18 Q. And the June 13th, I counted these and you can do the same
19 if you like and correct me if I'm wrong, but I counted up 21
20 people that signed the sheet that day.

21 A. Okay.

22 Q. Is that a fair enough count?

23 A. How many did you count?

24 Q. Twenty-one?

25 A. And we're looking at, should be July 13th but it's marked

1 June 13th?

2 Q. Right.

3 A. I got 19 -- Okay, 21.

4 Q. Okay. So we agree on that, 21 people on the line that
5 day, right?

6 A. Right.

7 Q. Now, look with me there on the last page of that July 12th
8 week where we're getting down to end of the alphabet and it
9 says Justin White. Do you see that?

10 A. Yes.

11 Q. Now, keep your finger on that page and flip back with me,
12 if you would, to the June 14th week, where it would say Justin
13 White at the end of that week.

14 A. Okay.

15 Q. Now, you see that signature there for Justin White on the
16 July 12th week?

17 A. Yes.

18 Q. I'm not a handwriting expert or anything, but would you
19 agree with me it looks a lot like the John Day signature from
20 the June 14th week?

21 A. It's similar.

22 Q. It does look similar?

23 A. Yes.

24 Q. Do you know why that's the case?

25 A. I have no idea.

1 Q. Neither do I. All right. Let's go to, flip forward with
2 me from where you had your finger stuck in there before and
3 let's go to like June 21st. We'll go up a week. Actually,
4 it's July 21st but it says June 21st. I know I'm confusing you
5 a little bit.

6 A. Okay.

7 Q. I counted 24 people on July 21st. Do you have any reason
8 to disagree with that?

9 A. It appears to be 24.

10 Q. And then at the end of it, you see John Day again?

11 A. Yes.

12 Q. And now it's written out "Day, Jr., J." and that doesn't
13 look like the signature we just looked at before for Mr. Day,
14 does it?

15 A. No. Again, as I explained earlier, these are not on the
16 picket line 100 percent of the time. You know, people that do
17 show up, they usually will contact somebody else that's been
18 there to fill in the spot if they were, if the sheet was not
19 there when they put their time in.

20 Q. Well, I'll tell you what. I'm afraid that I'm going to
21 bore everybody to tears, so I'm going to skip ahead a little
22 bit. Let's go to October. How about October 11th. Do you see
23 that one?

24 A. Okay.

25 Q. So, October 11th, looks like there's a bunch of notes

1 there, going down on that Monday, and it says Hasmon Abraham,
2 RTW. Is that return to work?

3 A. Right.

4 Q. Do you agree we me that's return to work?

5 A. Yes.

6 Q. Nathan Ackerman, it says quit?

7 A. Yes.

8 Q. So he's no longer with Daycon. I guess no longer out
9 there picketing, I guess, right?

10 A. He's no longer out there picketing. I was told that he
11 had quit.

12 Q. Okay. And then Thomas Geris, III, down there on that same
13 sheet, RTW. He returned to work as well?

14 A. Correct.

15 Q. If you flip the page, it says -- I apologize if I get the
16 pronunciation wrong, but Diarra Kamall Mackall?

17 A. Mackall.

18 Q. Mackall. Says "working." I guess we take that the same
19 way as return to work or --

20 A. No. That means other employment.

21 Q. Oh, they're working somewhere else. Okay. Thomas
22 McNeill, Sr. return to work, that's listed on October 11th,
23 right?

24 A. Right.

25 Q. Now, just because it's listed here on October 11th doesn't

1 mean it was necessarily on October 11th. Would you agree with
2 that?

3 A. Correct.

4 Q. I mean the date that they returned to work on
5 October 11th?

6 A. Correct.

7 Q. That just means that by that point they had returned to
8 work, right. Sorry. I talked over you. That's right?

9 A. Yes.

10 Q. Okay. John Merritt, return to work. Stanley Eugene
11 Miller, return to work, right?

12 A. Yes.

13 Q. Gregory Mingle, working. I guess that's the same as the
14 other one. He's working somewhere else, right?

15 A. My understanding, yes.

16 Q. Okay. William Posey, Sr. return to work. Robert Steven
17 Redmond, return to work, and Howard Robinson, return to work.
18 They're all listed on October 11th, right?

19 A. Correct.

20 Q. Then, if you turn the page, we've got Hubert Taylor,
21 return to work; Justin White and Daniel Wiggins are working, I
22 guess elsewhere, right?

23 A. Correct.

24 Q. And then Dale Windsor and John Day have both returned to
25 work as well, right?

1 A. Correct.

2 Q. And those were people that used to be out there picketing,
3 but now they're working, right?

4 A. Correct.

5 Q. So they're not out there picketing any more, and do you
6 blame them?

7 A. They're not out there picketing.

8 Q. Do you blame them for that?

9 A. Actually, while they were working, we didn't want them to
10 come out after hours and put a picket sign up or wear a picket
11 sign. They could come by and show some support.

12 Q. The answer to not picketing is "No, you don't blame them,"
13 right?

14 A. No. I told them not to.

15 Q. Okay.

16 A. But I told them that they could come out and show some
17 support.

18 Q. Let's go to, let's look at --

19 MR. TRAPP: And, Judge, this might be a little like
20 the other situation, although I do want to question Mr. Webber
21 about this. This is the Affidavit that was submitted with the
22 Petition.

23 THE COURT: Okay. Are you moving away now from the
24 sign-in sheets?

25 MR. TRAPP: Well, I'm going to come back to it with

1 this.

2 THE COURT: Okay. Again, anything, any document
3 anybody wants to show a witness to see if it refreshes recall,
4 just show it to the opposing counsel and then you can show it
5 to the witness. But if you want to do it for a prior
6 inconsistent statement, that would be different.

7 MR. TRAPP: Well, I'm going to take him through and
8 sort of match up the employees with the chart.

9 THE COURT: Okay. Whatever way makes most sense. Is
10 this the Declaration I've already seen?

11 MR. TRAPP: Yes. I just don't want to put it on the
12 screen if I'm not supposed to put it on the screen.

13 THE COURT: No. You can do that. If it's already
14 been submitted in the court file, that's fine. Whether it's
15 admissible as evidence is a different problem.

16 Q. Okay. Now, I guess we just need the names over.

17 THE CLERK: Can you just move that microphone.

18 Q. I said I guess we just need the names over. So, do you
19 recognize that document, Doug?

20 A. Yes.

21 Q. And this is a chart that you prepared, I believe, right?

22 A. Yes.

23 Q. And you submitted it to the Board so that they could
24 submit it in support of the Petition for an Injunction, right?

25 A. Yes.

1 Q. This was attached to your Affidavit?

2 A. Yes.

3 Q. And it looks like it says "As of December 11, 2010,"
4 right?

5 A. Yes.

6 MR. TRAPP: So, let me gather my stuff here. Bear
7 with me one second, Judge. I need to step over and grab
8 something.

9 THE COURT: Mr. Trapp, we are going to need to take a
10 break. Is this, perhaps, a good time to take it?

11 MR. TRAPP: This might be a good time. I need to
12 find my Affidavit.

13 THE COURT: We'll take a recess and resume in ten
14 minutes.

15 (A brief recess was taken.)

16 THE COURT: Please be seated. Mr. Trapp.

17 MR. MARSHALL: Actually, Your Honor, Mr. Trapp and I
18 spoke during the recess. There is a witness who I'm told has a
19 an appointment that he cannot miss downtown, so Mr. Trapp has
20 kindly agreed to pause his cross-examination of Mr. Webber so
21 that I can put on this individual witness.

22 I understand that he has an objection that he would
23 like to make for the record.

24 MR. TRAPP: It's just to put on the record the same
25 objection that I made off the record with Your Honor before. I

1 believe the individual testifying is Mr. McFadden, related to
2 personal, individual things, and I just reiterate on the record
3 we object to that testimony as it relates to the Section 10(j)
4 proceedings, but I understand you will probably hear it.

5 THE COURT: Right. We're going to hear it and decide
6 what to do later. All right. Thank you.

7 Mr. Webber, you may return to the audience area
8 temporarily. Thank you. Okay. Mr. Marshall.

9 MR. MARSHALL: Yes, Your Honor. Thank you. I'm
10 going to call Mr. Ronnie McFadden to the stand.

11 (The oath was administered.)

12 THE CLERK: Please be seated. Please speak loudly
13 and clearly into the microphone. State your name for the
14 record and spell your first and last names.

15 THE WITNESS: Ronnie McFadden, R O N N I E
16 M c F A D D E N.

17 DIRECT EXAMINATION

18 BY MR. MARSHALL:

19 Q. Good morning, Mr. McFadden. Sean Marshall. I'm an
20 attorney for the Petitioner, Wayne Gold, and I'm going to ask
21 you some questions this morning.

22 Mr. McFadden, are you employed right now?

23 A. Well, I'm supposed to be employed at Daycon right now.

24 Q. How long have you been employed by Daycon?

25 A. Sixteen years.

1 Q. What's your job with Daycon?

2 A. Lead.

3 Q. Is there a particular area where you're the lead?

4 A. The night shift. We, I check merchandise, make sure they
5 go out right on trucks and stuff like that, and stock
6 merchandise for the employees at night.

7 Q. Is there a particular department of Daycon where you're
8 the lead?

9 A. Night shift.

10 Q. Do you work in a particular area of the building?

11 A. It's something like, it's like all over, because when
12 you're lead, sometimes I may be in the stocking area, the
13 shipping area or the receiving area. Also, I may be in
14 processing books at night to send out stuff.

15 Q. Are you a union member?

16 A. Yes.

17 Q. What union are you a member of?

18 A. Local 639.

19 Q. How long have you been a member of 639?

20 A. About 16 years.

21 Q. Are you presently working, Mr. McFadden?

22 A. No.

23 Q. When was the last day you worked?

24 A. February 26th.

25 Q. What happened on February 26th, Mr. McFadden?

1 A. Well, I left work at February 26th. When I woke up on
2 February 27th I had internal bleeding.

3 Q. Prior to that day, Mr. McFadden, did you have health
4 insurance?

5 A. Yes.

6 Q. Where did you have health insurance from?

7 A. Daycon.

8 Q. What type of coverage did you have?

9 A. I think it's a PPO. I think it's a PPO. I'm not too
10 sure. I don't know if it's HMO or PPO. It's one of them.

11 Q. Was it just for yourself?

12 A. Yes.

13 Q. How much did your health care cost you?

14 A. Twenty some dollars and change, I think.

15 MR. MARSHALL: At this point, Your Honor, I'm going
16 to try to clear up something that I'm not quite certain got
17 resolved. Was General Counsel Exhibit 80 admitted into
18 evidence?

19 THE CLERK: Eighty?

20 MR. MARSHALL: Eighty.

21 THE CLERK: Yes.

22 MR. MARSHALL: Okay. Thank you.

23 Q. Mr. McFadden, on February 27th did you have any medical
24 conditions that you knew about at the time?

25 A. No.

1 Q. Did you have any problems with your blood pressure?

2 A. Well, yes, I do have blood pressure and I'm also a
3 diabetic.

4 Q. Did you know at the time, on February 27th?

5 A. Yeah, I did know that. I apologize for that one. I did
6 know that at the time.

7 Q. Did you have an ulcer at the time?

8 A. Yes, I also have that.

9 Q. Now, at the time were you being treated for your blood
10 pressure?

11 A. Yes.

12 Q. Were you being treated for your ulcer?

13 A. Yes.

14 Q. Were you being treated for your diabetes?

15 A. Yes.

16 Q. How long had you been treated for your blood pressure?

17 A. Since 2003.

18 Q. And your ulcer?

19 A. About around the same time.

20 Q. And your diabetes.

21 A. That started 2004.

22 Q. Let's go through each of those again. At the time and,
23 again, I am referring you to February 27, 2010. How were you
24 being treated for your blood pressure problem?

25 A. I take one tablet, two tablets a day. One is Diovan and

1 the other one is Atenolol, I think it's called, the Diovan in
2 the morning and the Atenolol at night.

3 Q. And your ulcer, how were you being treated for your ulcer
4 in February, 2010?

5 A. I take two pill a day. That's called Actifed.

6 Q. And your diabetes, how are you being treated for your
7 diabetes at the time?

8 A. I take one, two pill a day on that also, and that is
9 called Metformin.

10 Q. Who prescribed you these medications?

11 A. My doctor, family doctor.

12 Q. What's his name?

13 A. Doctor, make sure I pronounce it right, Matthews.

14 Q. Did your health insurance from Daycon cover your visits to
15 Dr. Matthews?

16 A. Yes, it did.

17 Q. Did your health insurance from Daycon cover your
18 medication for blood pressure?

19 A. Yes.

20 Q. Did it cover your medication for your ulcer?

21 A. Yes.

22 Q. Did it cover your medication for your diabetes?

23 A. Yes.

24 Q. Did it cover, let's go back to the doctor's visits. Did
25 your health insurance cover all of the costs of the doctor's

1 visit?

2 A. No. You still had to pay office visit, copayment for
3 office visits and stuff like that.

4 Q. And what about for your medications, did it cover all the
5 medications?

6 A. Well, it covered medication to a certain extent. You
7 still had to pay copayment on that also.

8 Q. What was your copayment for those medications that you
9 listed?

10 A. Well, all the medicine only cost me a hundred dollars a
11 month, for three months.

12 Q. Now, let's go back to February 27th. You testified that
13 you got sick and you had some internal bleeding. Could you
14 describe further for the Court what your symptoms were that you
15 noticed?

16 A. Well, every time I go to the bathroom I was bleeding heavy
17 and stuff.

18 Q. Um hum. Where was that bleeding?

19 A. I guess it would be your rectum, I guess you would say.

20 Q. Did you seek treatment for that?

21 A. Yes. Yes.

22 Q. What did you do to seek treatment?

23 A. I went to Doctors Community Hospital on that Saturday
24 afternoon, around about 4:00 in the afternoon.

25 Q. And where is Doctors Community Hospital located?

1 A. I would say New Carrollton. I don't think it's New
2 Carrollton. I'll say P.G. County to be on the safe side.

3 Q. Now, let's go through step by step. What happened when
4 you got to the hospital.

5 A. They immediately admitted me into the emergency room.
6 They kept an eye on me. I was losing a lot of blood and stuff,
7 and then they realized, started giving me IV and stuff like
8 that, and monitoring how many times I go to the bathroom, still
9 pass out blood and stuff.

10 Q. How long -- Were you in a particular area of the hospital
11 at that time when you got there?

12 A. Yeah. I was only in the emergency room. They kept me in
13 the emergency room for about 12 hours and then put me in ICU.

14 Q. Now, could you describe for the Court any treatment that
15 you received in the emergency room?

16 A. Pain killers, make sure, keep down the pain, because I was
17 in a lot of pain at the time.

18 Q. And you said that then you went to the ICU, correct?

19 A. Um hum. Um hum.

20 Q. What happened when you got to the ICU?

21 A. They put me on a monitor, heart monitor machine and
22 everything, and different things like that.

23 Q. Were your symptoms diagnosed at all?

24 A. After about, I think the second day they diagnosed it.

25 Q. What was the diagnosis?

1 A. Diverticulosis.

2 Q. Do you know what that means, Mr. McFadden?

3 A. Well --

4 Q. Your condition?

5 A. Well, it means that I have a lot of, on my large intestine
6 I have a lot of, I guess they call it bumps or something like
7 that, and they're bleeding real bad and stuff.

8 Q. Now, when you were in the ICU, were you told that you were
9 going to be released at any time?

10 A. No.

11 Q. Do you recall being told that you were going to be
12 released on March 4th?

13 A. Oh, yeah, I did. Because during that time it had stopped.
14 It had stopped then.

15 Q. Were you released on March 4th?

16 A. No.

17 Q. Why not?

18 A. Because that afternoon it started back up again.

19 Q. What started back up again?

20 A. The bleeding and stuff.

21 Q. And what happened to you then?

22 A. Well, I bled all night long and stuff, and then they
23 called my daughter and my son and my sister and they told them
24 they got to do surgery.

25 Q. Okay. And what happened then?

1 A. Well, they removed a majority of my large intestine.

2 Q. After your surgery, did you stay in the hospital?

3 A. Yes, for about two days shy of a month.

4 Q. Do you recall when your surgery was?

5 A. March 7th.

6 Q. And do you recall when you were released from the
7 hospital?

8 A. The last two days of March. I can't remember what date it
9 was, but it was on a Wednesday.

10 Q. What happened in the hospital after your surgery and
11 before you were released?

12 A. I came down with a bad infection.

13 Q. Were you treated for that infection?

14 A. Yes.

15 Q. Could you describe that for the Court?

16 A. Well, they said my body had built up some kind of pus
17 inside it, around my intestine and stuff, and they had to stick
18 a needle in my side and drain it out and stuff.

19 Q. Did your infection clear up?

20 A. Yes.

21 Q. Were you released from the hospital?

22 A. Yes.

23 Q. When you were released, were you able to go back to work
24 at the time?

25 A. No.

1 Q. Were you under continued medical care?

2 A. Yes.

3 Q. Please describe what care you were under after you left
4 the hospital?

5 A. They had a nurse to come in three time a week to give me
6 more antibiotics, and they had another nurse to come in to
7 change my wound and stuff. That was twice a week.

8 Q. Were you prescribed any medications?

9 A. Pain killers.

10 Q. After you were released from the hospital, did you
11 continue to have to see your surgeon?

12 A. Yes.

13 Q. How long did you have to see your surgeon?

14 A. I saw him once a week all the way up to May 23rd, I think.

15 Q. Now, this period of time, from the time when you got sick
16 up to, you know, when you were released and receiving your home
17 care, did you have health insurance?

18 A. Yes, up to a certain extent.

19 Q. Okay. Could you describe what the extent was.

20 A. Well, I received a paper in the mail, said they cut my
21 insurance off on May 21st.

22 Q. But you had insurance up to May 21st?

23 A. Up to May 21st.

24 Q. Did your insurance cover your hospital stay?

25 A. A percentage of it.

1 Q. Do you know what that percentage was?

2 A. Something like about 80 some percent, about 82, 83
3 percent.

4 Q. Did your insurance cover your surgery?

5 A. I guess I considered, all that was considered all in one
6 bill.

7 Q. Okay.

8 A. All that was in one bill.

9 Q. What about the medication that you received? Did your
10 insurance cover that?

11 A. Percentage of that also.

12 Q. Okay. What about the home care that you received?

13 A. I think they covered all of that. I'm pretty sure they
14 covered all of that.

15 Q. Mr. McFadden, do you currently have health insurance?

16 A. No.

17 Q. And you testified that you received notice that you lost
18 it on May 21st?

19 A. Um hum.

20 Q. Do you know why you lost your health insurance?

21 A. Well, not to my knowledge. I thought that my insurance
22 would continue on while I was out sick until June 14th, when I
23 was supposed to report back to work, but it didn't. They tell
24 me, said the funds ran out to pay the insurance, which was a
25 shock to me.

1 Q. Um hum.

2 A. Because I thought usually with most jobs and stuff that
3 you would cover the employee until he returned back to work.

4 Q. Now, after the last time you saw your surgeon, when was
5 the next time that you saw a doctor.

6 A. June, I think 4th.

7 Q. Do you recall who you saw on that day?

8 A. Dr. Matthews.

9 Q. Where did you see him?

10 A. At his office.

11 Q. Do you know where his office is?

12 A. In Bowie.

13 Q. Why did you see him?

14 A. Because I was having problem with my eyes blurring and
15 stuff like that, and I can sometimes see and sometimes I
16 couldn't see and stuff.

17 Q. Did you still have a blood pressure problem at that time?

18 A. Yes, I still had the blood pressure problem. But when I
19 went to see him and stuff he told me, he said my sugar level
20 was way off.

21 Q. Did he prescribe you any medication?

22 A. He increased my Metformin by a thousand milligrams.

23 Q. Did you have health insurance to cover this visit?

24 A. No.

25 Q. How did you pay for it?

- 1 A. I didn't.
- 2 Q. Mr. McFadden, have you seen a doctor since that time?
- 3 A. Yes, I saw him again back in about three weeks ago.
- 4 Q. Was it the same doctor?
- 5 A. Same doctor.
- 6 Q. Why did you see him?
- 7 A. Because I was sitting down in a chair and stuff and I
8 started getting chest pains and stuff, real bad and stuff.
- 9 Q. Do you continue to have a problem with your eyes?
- 10 A. Yes, also. They're getting no better.
- 11 Q. Did you discuss the problem with your eyes with your
12 doctor at that last time?
- 13 A. Yes. And he tells me my sugar level is 400 and something
14 and I need to see a specialist to help me get it down.
- 15 Q. Have you seen a specialist?
- 16 A. Um um. No.
- 17 Q. Why not?
- 18 A. I ain't got no insurance.
- 19 Q. Are you currently prescribed all those medications that we
20 talked about before?
- 21 A. Yes.
- 22 Q. Are you taking the Diovan, I think you said it was?
- 23 A. Yeah, the Diovan.
- 24 Q. And what was the other blood pressure medication again?
- 25 A. It's hard for me to pronounce the name, but I know it

- 1 start with an A.
- 2 Q. Okay.
- 3 A. Hard for me to pronounce the name of that.
- 4 Q. Are you taking that?
- 5 A. Yes.
- 6 Q. Are you taking the Actifed?
- 7 A. No.
- 8 Q. Why not?
- 9 A. It is too expensive.
- 10 Q. How much is it?
- 11 A. Two hundred fifty dollars.
- 12 Q. For how much?
- 13 A. Sixty pills, twice a day.
- 14 Q. And is that a one month supply?
- 15 A. That's a one month supply.
- 16 Q. When you had health insurance, how much did your Actifed
17 cost you?
- 18 A. Thirty dollars.
- 19 Q. Mr. McFadden, I'm going to shift gears for a moment.
20 Where do you live?
- 21 A. Landover Hills. Some people say Hyattsville.
- 22 Q. What's your address?
- 23 A. 4814 66th Avenue.
- 24 Q. Is that a single family home?
- 25 A. Yes.

- 1 Q. Do you own it?
- 2 A. Yes.
- 3 Q. Do you have a mortgage?
- 4 A. Yes.
- 5 Q. What is the mortgage company?
- 6 A. Bank of America.
- 7 Q. How long have you lived there?
- 8 A. About 16 years.
- 9 Q. Do you know what your monthly mortgage payment is?
- 10 A. Yes.
- 11 Q. What is it?
- 12 A. \$1,625.00.
- 13 Q. Mr. McFadden, I'm going to show you a document. Just take
14 a look up at me when you're finished glancing over the
15 document, Mr. McFadden.
- 16 A. Okay.
- 17 Q. Do you recognize this document, Mr. McFadden?
- 18 A. Yes.
- 19 Q. What is this document?
- 20 A. This is a statement from my mortgage company and stuff.
- 21 Q. Now, Mr. McFadden, I notice the address says Rosemary
22 McFadden. Who is Rosemary McFadden?
- 23 A. That is my wife.
- 24 Q. Is she alive?
- 25 A. No, she's not. She's deceased.

1 Q. How long has she been deceased?

2 A. Two years.

3 MR. MARSHALL: Your Honor, at this time I'm going to
4 move for admission of General Counsel Exhibit 83.

5 THE COURT: No objection?

6 MR. TRAPP: No.

7 THE COURT: Okay. Received.

8 MR. TRAPP: Well, let me --

9 THE COURT: Subject to the relevance determination.

10 MR. TRAPP: Yeah.

11 THE COURT: Go ahead.

12 Q. Mr. McFadden, I'm going to direct your attention to where
13 it says, right near the top of this document "Monthly charges,"
14 and then it has the date April 1, 2010.

15 A. Um hum.

16 Q. And then there is a number next to that. Did you pay your
17 mortgage for the month of April?

18 A. No.

19 Q. Did you pay your mortgage for the month of March?

20 A. No.

21 Q. Is the charges, the \$9,572?

22 A. Um hum.

23 Q. What amount does that reflect?

24 A. That reflect the mortgage over the last couple of months
25 or so.

1 Q. And the number that's opposite the date October 1, 2010,
2 what number does that reflect?

3 A. That is the mortgage also.

4 Q. Is the \$9,572, is that the mortgage charges that you've
5 incurred since April 1, 2010 up to October 1, 2010?

6 A. Yes.

7 Q. And then the figure, the \$6,300 roughly figure --

8 A. Um hum.

9 Q. -- is that the mortgage charges that you've incurred since
10 October 1, 2010 up to the date of this letter?

11 A. Yes.

12 Q. Mr. McFadden, do you have an appointment this afternoon?

13 A. Yes.

14 Q. Who is your appointment with?

15 A. NACA.

16 Q. What is that?

17 A. NACA is a relief program to help people maintain and keep
18 their house and stuff.

19 Q. Why are you seeing them?

20 A. I'm hoping to be able to get them to wipe -- I'm hoping to
21 get them to wipe this bill off and refinance my house.

22 MR. MARSHALL: Thank you, Mr. McFadden. I don't have
23 any further questions.

24 THE COURT: Mr. Trapp.

25 CROSS EXAMINATION

1 BY MR. TRAPP:

2 Q. Thank you, Judge. Mr. McFadden, I'll try to be brief.
3 I'm sorry to hear about your medical issues, but I will ask you
4 just a few questions. With regards to General Counsel Exhibit
5 83, did I understand correctly that you hadn't paid your
6 mortgage in March of this year, right?

7 A. No. April. This is April.

8 Q. I thought you had said you hadn't paid it in March or in
9 April?

10 A. I said April. It says April on the paperwork. It's
11 April.

12 Q. So, is it your testimony then that you were current on
13 your mortgage until April?

14 A. Yes, I was.

15 Q. Okay. And I don't know if I got all of it, but I think
16 that you said that you were in the hospital?

17 A. Um hum.

18 Q. In March?

19 A. March, yes.

20 Q. Okay. And you were out of work during that time until, I
21 don't remember what you said, May, June?

22 A. June 14th.

23 Q. Okay. And during that time you had health care up until
24 May 21st?

25 A. Um hum.

1 Q. And you were receiving short term disability benefits
2 until them?

3 A. Yes.

4 Q. Did you receive short term disability benefits after that?

5 A. No, not after May 21st.

6 Q. Did you ever go on long term disability?

7 A. I tried to with the company, but they refused me. I sent
8 in some letters to fill out the form and stuff and they refused
9 to give me the long term disability.

10 Q. Did you support the strike that began on April 26th?

11 MR. MARSHALL: I'm going to object, Your Honor, as
12 beyond the scope of direct.

13 THE COURT: Overruled.

14 MR. TRAPP: The only reason I am getting into it,
15 Judge --

16 THE COURT: Overruled.

17 THE WITNESS: Do you want me to answer the question?

18 THE COURT: Yes.

19 Q. Yeah.

20 A. Yes, I supported the strike.

21 Q. Okay. And so when you came back it was not your intent to
22 return to work because you wouldn't cross the line, correct?

23 A. Well, it all depends on how you look at it. I received a
24 paper in the mail on the 14th, told me my job had been
25 replaced, so there wasn't no need for me to go across the line.

1 Q. Okay. That was in --

2 A. June 14th.

3 Q. June 14th, right.

4 A. Paper dated June 14th. The day I was due back to work I
5 received a paper from Daycon said they don't need for me to go
6 back to work.

7 Q. Did you try to come back to work?

8 A. No. Once you receive the paper, they tell me they don't
9 want me in the building, I'm not going to go off the line.
10 Plus, you got security out there and you also got signs said
11 "No trespassing."

12 Q. Had you heard, or were you aware that there were employees
13 that crossed the line after the strike began?

14 A. Not until I came back from out of the hospital. I didn't
15 come at the strike line at all until the 14th.

16 Q. Okay. Were you aware that you had the option to cross the
17 line after the strike began?

18 A. Well, if I would have had the option, then why did I
19 receive a paper in the mail?

20 Q. Well, did you ever make it known that you intended to
21 return to work and not honor the strike?

22 A. No, I didn't make it known. I didn't tell no one what I
23 was going to do. But my point is the idea that I received a
24 paper in the mail telling me on the 14th there wasn't no need
25 for me to even try to come back to work.

1 Q. Okay. Let's talk a little bit about -- before March, did
2 you attend a meeting of the union?

3 A. Yes.

4 Q. Was that a strike vote?

5 A. Yes.

6 Q. And at that meeting was there a presentation from a woman
7 named Kathleen McKircy, or something like that?

8 A. I don't remember.

9 Q. Was there someone from, you might not remember her name
10 but was there someone from the Metropolitan Council of D.C.,
11 the AFLCIO that spoke.

12 A. I don't remember. I was in a lot pain at the time.

13 Q. Okay. Do you remember anything about anyone presenting to
14 you and the other employees what options you might have if you
15 went on strike?

16 A. No. I don't remember.

17 Q. Okay. Did anybody ever tell you that you could apply for
18 emergency benefits through the Metropolitan Council as a union
19 member?

20 A. No.

21 Q. Have you heard anything like that?

22 A. No.

23 Q. Okay. So you have never applied for anything like that?

24 A. No.

25 Q. Okay. And, you know, take this for what's it worth.

1 Maybe it's not the truth, I don't know, but I understood that
2 you could apply for benefits and you might check into that.

3 MR. MARSHALL: Objection, Your Honor. Assumes facts
4 not in evidence.

5 THE COURT: Let's not have that kind of discussion.
6 He's answered that he hasn't heard of any.

7 Q. Did you ever receive a COBRA letter from the company?

8 A. What's a COBRA letter?

9 Q. A letter that you would receive that would give you the
10 option of continuing your health insurance?

11 A. Yes, I received that.

12 Q. And did you decline or accept?

13 A. I declined that because the price was too high.

14 Q. Okay. You had been on short term disability several other
15 times during your employment with Daycon, right?

16 A. Yes.

17 Q. For various medical issues?

18 A. Yes.

19 Q. Okay. And you had, you had a 401(k) at Daycon, right?

20 A. Yes.

21 Q. And you took various loans at times from the 401(k)?

22 A. Yes.

23 Q. I don't want to get too much into the details, but I
24 understand you took a loan out several years ago to help pay
25 for an unpaid mortgage. Is that right?

- 1 A. No, that wasn't what it was for.
- 2 Q. What was it for?
- 3 A. My wife was sick at the time and I paid her doctor bills.
- 4 Q. Okay.
- 5 A. She was sick.
- 6 Q. When was that one, Mr. McFadden?
- 7 A. My wife started getting sick in 2002.
- 8 Q. Okay.
- 9 A. All right. For various medical reasons and stuff.
- 10 Q. Okay. Did you represent to the company that it was for an
11 unpaid mortgage?
- 12 A. Well, my wife filled out the forms, so she must have said
13 that, but it was not for that.
- 14 Q. Okay. Fair enough. And there were other loans that you
15 took out during your tenure with Daycon as well, right.
- 16 A. Yes.
- 17 Q. Do you remember what those were for?
- 18 A. Medical expenses.
- 19 Q. Okay. And you took one out, you took a loan of \$7,000 in
20 April of 2010, right?
- 21 A. Medical expenses.
- 22 Q. Okay. Have you sought health insurance through any other
23 source?
- 24 A. I have tried. Other insurance companies, due to my health
25 they denied me their policy.

1 Q. Okay. I don't know how this works, but have you tried
2 like Medicare, Medicaid or anything like that?

3 A. I'm not old enough. You got to be 65 to get it. I tried
4 that.

5 Q. To get Medicaid?

6 A. Medicaid in Maryland. I have been through the program and
7 stuff.

8 Q. Okay. You testified you saw a doctor a couple weeks ago?

9 A. Um hum.

10 Q. How was that paid for?

11 A. Well, he just tell me he's going to reduce my payment this
12 time, but only this time to \$40, so I paid him the \$40.

13 Q. Okay. Are you receiving strike benefits from the union?

14 A. Yes.

15 Q. How much are those?

16 A. \$196.00.

17 Q. \$196 how often?

18 A. Every week.

19 Q. Every week, \$196?

20 A. Hum?

21 Q. \$196 every week?

22 A. Yes.

23 Q. Okay. And how long have you been getting those?

24 A. Since July 4th, I think. July, it wasn't the -- the 4th
25 was a Friday. July 9th or something like that on Friday, the

1 first Friday of July.

2 Q. Some time last summer, right?

3 A. Right.

4 Q. Okay. And do you receive any unemployment benefits?

5 A. Yes.

6 Q. How much are those?

7 A. \$410.00.

8 Q. And how often is that?

9 A. Every two weeks, \$410 a week, \$820 every two weeks.

10 Q. Okay. How long have you been receiving those benefits?

11 A. Since the middle of July.

12 Q. Of 2010?

13 A. Um hum.

14 Q. Okay. Now, there were -- In the past with Daycon, you've
15 had your wages garnished several times, is that right?

16 A. Yes.

17 Q. It looks like they've been garnished from about --

18 A. It wasn't several times. It was only twice.

19 Q. Okay. Do you remember a garnishment from Montgomery
20 Wards?

21 A. When? What date?

22 Q. 1999.

23 A. Yes, I think so.

24 Q. Do you remember a garnishment after that from Rose Shanis
25 Financial?

1 A. Yes.

2 Q. Do you remember a garnishment in 2003 from Refinance
3 America?

4 A. Um hum.

5 Q. And do you remember a garnishment from just this past year
6 from Southern Maryland Anesthesia?

7 A. No. Don't know nothing about that.

8 Q. Okay. You filed for bankruptcy previously, right?

9 A. Right.

10 Q. That was maybe as a result of your wife's medical
11 condition or something?

12 A. Yes.

13 Q. Have you had problems with finances before 2010, is that
14 fair to say?

15 A. Not too much probably finance. Only problem I had before
16 that time was, you mentioned the garnishment and stuff like
17 that, right. That's when I filed, also filed for the
18 bankruptcy which would clear all that out for me and stuff.

19 Q. Okay. And that all got cleared out then?

20 A. Um hum.

21 Q. And, correct me if I'm wrong in this, but it sounds like
22 largely since then you've been financially okay except for your
23 medical condition has impacted.

24 A. Not quite okay. You're never okay, because I have other
25 expenses and stuff like that that I have to take care of and

1 stuff.

2 Q. Well, I'm saying you haven't been fully financially fit,
3 let's say, and largely due to your medical condition?

4 A. Yes, I have some time.

5 Q. Let me say it another way. You've had financial problems
6 but they've stemmed from the your medical condition, largely.

7 Is that fair?

8 A. Yeah, I have problems with my medical condition, yes.

9 Q. And that was true previous to 2010, wasn't it?

10 A. Well, I don't want to say yes. I don't want to say no,
11 because right now I don't understand what you're saying. You
12 got me very confused.

13 Q. Well, your medical condition didn't just happen --

14 A. Over night.

15 Q. Over night.

16 A. All right. There we go. No it hasn't.

17 Q. Okay. So it's fair to say that you have had some
18 financial issues in the past prior to this whole issue that got
19 us here today, the whole strike?

20 A. Well, my medical condition actually, to me, right, have
21 nothing to do with the strike.

22 Q. No. I'm not saying it does.

23 A. Nothing to with the strike, and that's the way I look at
24 that.

25 Q. And neither does your financial problems --

1 A. My financial problems comes in along with my medical
2 condition but I don't have the insurance and different things
3 like that to help me pays the medical expenses.

4 Q. Right. Okay. And you weren't on like the bargaining
5 committee or anything like that?

6 A. No.

7 Q. Did you attend any bargaining session between Daycon or
8 the union?

9 A. No, I did not.

10 MR. TRAPP: And I'll just leave it at that, I think.
11 That's all I have?

12 THE COURT: Any redirect?

13 MR. TRAPP: Thank you, Mr. McFadden.

14 THE WITNESS: Thank you.

15 REDIRECT EXAMINATION

16 BY MR. MARSHALL:

17 Q. Mr. McFadden, I'm going to ask what I hope is just going
18 to be one question.

19 A. Um hum.

20 Q. Mr. Trapp asked you a number of questions about, you know,
21 financial issues going back to 1999.

22 A. Um hum.

23 Q. Were you working at those times?

24 A. Yes.

25 Q. Are you working now?

1 A. No.

2 MR. MARSHALL: Thank you.

3 THE COURT: Any additional questions?

4 MR. TRAPP: No, Your Honor.

5 THE COURT: Thank you, Mr. McFadden. That completes
6 your testimony and you are excused.

7 MR. MARSHALL: Your Honor, could I have a moment to
8 confer with Mr. Trapp?

9 THE COURT: Sure.

10 MR. MARSHALL: Thank you.

11 (Pause.)

12 MR. MARSHALL: Your Honor, if it's okay with the
13 Court, I have an additional employee witness. I expect that
14 she could take approximately the same amount of time as Mr.
15 McFadden took. Mr. Trapp has kindly agreed to allow me to call
16 her now, if that's okay with Your Honor.

17 THE COURT: Sure. Go ahead.

18 MR. MARSHALL: Your Honor, I'm going to call Ms.
19 Brenda Taylor to the stand.

20 (The oath was administered.)

21 THE CLERK: Please be seated. Please speak loudly
22 and clearly into the microphone. State your name for the
23 record and spell your first and last names.

24 THE WITNESS: Brenda Taylor, B R E N D A, Taylor,
25 T A Y L O R.

1 Q. What up union are you a member of?

2 A. Local 639.

3 Q. Is that the Teamsters?

4 A. Yes.

5 Q. How long have you been an union member?

6 A. Six years.

7 Q. Are you presently working?

8 A. No.

9 Q. When was the last day you worked?

10 A. April 26th, or should I say the 25th or the 24th,
11 whatever that Friday was, because Monday we went on strike
12 which was the 26th.

13 Q. I think Mr. Trapp will stipulate that April 23rd was a
14 Friday.

15 A. Okay. That was my last day of work.

16 MR. TRAPP: April 23rd. I know that. I agree with
17 it.

18 Q. Before that day did you have health insurance?

19 A. Yes, I did.

20 Q. Where did you have health insurance from?

21 A. Daycon products.

22 Q. What type of health insurance did you have?

23 A. I'm not sure the name, but I had single coverage.

24 Q. How much was that coverage?

25 A. About \$20 and some change.

1 Q. How often were you paying that \$20?

2 A. Every two weeks.

3 Q. And, for the record, Ms. Taylor, why was April 23rd your
4 last day of work?

5 A. Well, when I came out to work, we was out on strike. When
6 I got the off the bus on the 26th I seen the strike line, and
7 at that point I guess I want to it call the security guards and
8 the signs were outside, was not allowing any of us to come into
9 the building, so there I was on the strike line.

10 Q. Have you had health insurance since then?

11 A. No.

12 Q. Did you receive anything about your health insurance from
13 Daycon?

14 A. Yes, I did.

15 Q. I'm going to show you document, Ms. Taylor. Please just
16 take a moment to look at that and look up at me when you finish
17 looking at that document.

18 Do you recognize this document?

19 A. Yes, I do.

20 Q. What is this document?

21 A. This is a document that Daycon send me in the mail,
22 telling me that if I possibly go on strike that my insurance
23 will go up and that my insurance will then be \$407.12.

24 Q. And I'm going refer you to the second page of this
25 document.

1 A. Yes.

2 Q. Is that your address?

3 A. Yes, it is.

4 Q. Okay.

5 MR. MARSHALL: I'm going to move for the introduction
6 of General Counsel Exhibit 84 at this time.

7 THE COURT: Subject to the objection, or is there a
8 different?

9 MR. TRAPP: Yeah. And I just got this yesterday and
10 I meant to ask Ms. Kendall about it, but I forgot and she is
11 nine months pregnant so -- I don't want to be seen as agreeing
12 to it on that basis.

13 THE COURT: Okay. We'll take this up later. We'll
14 reserve on it, but you can go ahead and ask questions if you
15 need to.

16 Q. Now, at the time you lost your health insurance, were you
17 receiving any medical treatment for any medical conditions?

18 A. Yes. At the particular time I was going back and forth to
19 the doctor. They had found some problems with me. I was
20 losing blood.

21 Q. All right. Well, let's take these in turn. Were you
22 getting treatment for anything else other than blood in urine?

23 A. Yes. They was give me pain medication for headaches that
24 I was having, prior to some paperwork that already had been
25 given to Daycon about this tumor. Well, I'm not going to say a

1 tumor. They found a bone growing on the left side of my brain
2 and they was give me pain pills for that.

3 Q. At the time did you have any problems with your heart?

4 A. At that particular time before then I had a heart attack
5 and they were giving me medication for that. I had to take
6 Plavix, I believe the name of it is what I was taking.

7 Q. Were you being treated for anything else?

8 A. Let me see. The blood loss, the headaches, and also my
9 doctor wanted me to go and have a sonogram -- not a sonogram, a
10 mama -- I can't get the words out right, but they wanted to do
11 a CAT scan on my head to check to see where the bone was
12 moving.

13 Q. Were you being treated for depression at the time?

14 A. Yes. I do have medication for depression, or was taking
15 medication for depression.

16 Q. Okay. Now, let's start with what you mentioned about the
17 blood in your urine.

18 A. Yes.

19 Q. How long had you been experienced that?

20 A. Well, I started sometime, I believe they started running
21 me like in October, that I was going back and forth to see this
22 specialist that my doctor wanted me to see.

23 Q. And what year was that?

24 A. That was in 2009, towards the end when it started.

25 Q. Did you have any other symptoms, other than blood in

1 urine?

2 A. Well, they said something about they might have found some
3 type of kidney stones.

4 Q. Did you have any bloating at the time?

5 A. Yes. I still have that.

6 Q. Did you see a doctor for these symptoms that you were
7 experiencing?

8 A. Yes, I did.

9 Q. When did you see the doctor?

10 A. I seen a specialist, I guess it was back in the time, I'm
11 not sure of the exact date but I want to say around February,
12 March, somewhere in there.

13 Q. And did doctor give you diagnosis?

14 A. Yeah, he did. First he had me to go and do an in and out
15 surgery. That's when they found I had lost some blood, so I
16 had a in and out surgery. And after they did the in and out
17 surgery, they found a few things that was going wrong with me
18 but they also detected that they wanted to do another surgery,
19 which was an another surgery to go into the back part of me, my
20 rectum.

21 Q. Well, let's rewind the clock here a little bit. When did
22 you see that specialist?

23 A. If I'm not mistaken, again, like I said, it would be
24 around February or March when I was seeing the specialist.

25 Q. Of what year?

1 A. Of 2010.

2 Q. Now, after you saw the specialist, did your condition
3 improve at all?

4 A. No.

5 Q. Did you continue to have the same symptoms that you had
6 before?

7 A. Yes.

8 Q. Did you develop any new symptoms?

9 A. Basically, yeah. The bloating is still there, the
10 headaches are still there. The depression got even worsen.

11 Q. Did you have any difficulty, how do I put this, holding
12 your urine?

13 A. Yes, I did.

14 Q. Okay.

15 A. And he also gave me medication for that.

16 Q. Okay. When was that?

17 A. That was in March, between February and March.

18 Q. And you mentioned an in and out surgery. What do you mean
19 by that?

20 A. Well, they wanted to run tests to find out exactly where
21 the blood was coming from, so what they did was they had me to
22 come in for the surgery, the first part of the surgery, and
23 they put a telescope, like a camera, inside of me.

24 Q. Okay. Where did they put the telescope?

25 A. In my vagina.

1 Q. Did they find out where the blood was coming from?

2 A. No. At that particular time they seen a few things, but
3 they said they wanted me to come back and set up another
4 schedule date to do the one for the rectum.

5 Q. And when was that in and out surgery that you had?

6 A. If I'm not mistaken, again, it had to be somewhere between
7 February or March.

8 Q. Now, at the time did you have health insurance?

9 A. Yes, I did.

10 Q. Did your insurance cover seeing the doctor?

11 A. Yes it did.

12 Q. Did it cover all of --

13 A. No, it didn't.

14 Q. Do you know what the percentage was that it covered?

15 A. My copayments was \$30.

16 Q. How about that in and out surgery. Did your insurance
17 cover that?

18 A. They covered some if it, if I'm not mistaken.

19 Q. Do you remember how much?

20 A. No. I'm not sure.

21 Q. Now, after that first in and out surgery, they said they
22 wanted to schedule another one?

23 A. Yes.

24 Q. Did you end up having that second in and out of surgery?

25 A. No, sir, I did not.

1 Q. Why not?

2 A. Because I had no insurance.

3 Q. Do you still have those same symptoms?

4 A. Yes, I do.

5 Q. Have you received any treatment at all for those symptoms
6 since having that first surgery?

7 A. No, sir.

8 Q. Why not?

9 A. Because I have no insurance and no way to pay for it.

10 Q. Have you seen a doctor for those symptoms?

11 A. I've called my doctor and I have spoke with my doctor but
12 she informed me has she would have to charge me to come in,
13 which would be \$60 and \$60 I just do not have.

14 Q. Did she say that you'd be responsible for any other
15 charges?

16 A. She said I would be responsible for everything. If I do
17 any blood work or anything that I have done, I'm responsible
18 for paying for it.

19 Q. Okay. Now, going back to April, you mentioned you had
20 headaches related to a bone condition?

21 A. That's correct.

22 Q. Could you please describe that for the Court?

23 A. Well, when I went to the doctor they had told me, they had
24 did a CAT scan and they had come back and told me that they had
25 found this bone growing on the left side of my brain. It was

1 very rare, but it was no treatment for, or no cure, should I
2 say, for it. But told me as the bone grow that I would begin
3 to experience headaches.

4 Q. And when was that CAT scan, when you found out about that?

5 A. That was in June of 2005.

6 Q. Were you prescribed any medication?

7 A. At the time when I was seeing them in the emergency room,
8 when they kept me they gave me Percocets.

9 Q. Did you continue to have those headaches after 2005?

10 A. For a period of time they had stopped, because she told me
11 it would be a period where they would come and go, but they
12 started back probably right before we went on strike, because I
13 was following back and forth to the doctor around those times
14 between January, February, March.

15 Q. Was seeing the doctor covered by your insurance?

16 A. Yes.

17 Q. Did it cover all of the costs of seeing the doctor?

18 A. I'm not going to say it covered all, but they paid a
19 certain percentage and I believe we had a certain percentage we
20 had to pay.

21 Q. Okay. Did your doctor prescribe anything at the time?

22 A. Well, at this particular time she wanted me to go see a
23 specially and have another CAT scan done, and also she would
24 not give me any strong pain medication. The strongest she gave
25 me was Tylenol with Codeine.

1 Q. Did you have that CAT scan?

2 A. Not.

3 Q. Why not?

4 A. Because while we was in the process of trying to get me to
5 see all the specialists I no longer have no insurance.

6 Q. Did you get the medication?

7 A. No.

8 Q. Have you continued to have those headaches?

9 A. Yes.

10 Q. Have you sought any treatment for them?

11 A. No. Actually, I was going to plan to go to the emergency
12 room if I could not come up with the money to go to the doctor.

13 Q. Did you talk to your doctor about that?

14 A. Yes, I did.

15 Q. What did you tell your doctor?

16 A. She told me that she was more than willing to see me but,
17 again, it will be a copayment of \$60 and anything that I need
18 done out of that would come out of my pocket.

19 Q. Now, let's go back and talk about the heart problem that
20 you mentioned before.

21 A. Yes.

22 Q. Could you please describe when your heart problem
23 developed?

24 A. This was a few years ago. So I'm going to say around --
25 I'm not sure of the date. I didn't want to say exactly what

1 year or what date it was, but I know that it's been a while
2 back. I say about eight or nine years ago that I had my first
3 heart attack.

4 Q. Were you prescribed any medication at that time?

5 A. Yes.

6 Q. What were you prescribed?

7 A. Plavix.

8 Q. Were you told how long you would have to take Plavix?

9 A. She told me that I suppose to take it for the rest of my
10 life.

11 Q. What was that?

12 A. Dr. Ursula Poydras.

13 Q. In April, before you went out on strike, were you taking
14 Plavix?

15 A. At that particular time, no. I had not got my
16 perscription filled. At the time she wanted me to go see some
17 specialist, so she had removed me from that at that -- I ain't
18 going to say remove me. She didn't give me a perscription for
19 it at that time.

20 Q. When was the last time that you had taken Plavix?

21 A. Okay. I want to say about 2009, the end of 2009 is about
22 the last time.

23 Q. Okay. Are you currently taking Plavix?

24 A. No.

25 Q. Why not?

1 A. Because I have no money to pay for it.

2 MR. MARSHALL: Okay. Thank you, very much, Ms.

3 Taylor. I don't have any further questions for you. Mr. Trapp
4 will ask you some questions.

5 THE COURT: Mr. Trapp.

6 CROSS EXAMINATION

7 BY MR. TRAPP?

8 Q. Ms. Taylor.

9 A. Yes.

10 Q. Good afternoon, officially.

11 A. Good afternoon.

12 Q. Sorry to hear about your medical problems. And I will be
13 brief with you as well. It sounded like I just heard you say
14 you stopped taking Plavix in 2009?

15 A. Yes.

16 Q. So, this was a year before the strike, correct?

17 A. Well, I'm not going to say a year. It was like the end of
18 that, December of that year of 2009, she wanted me to have more
19 tests done.

20 Q. Okay. But you stopped taking it prior to losing your
21 insurance?

22 A. Probably I stopped taking it due to the fact that she
23 wanted to have other tests done and before I could go back and
24 get the tests done, I had no insurance.

25 Q. Okay. Did you support the strike that was initiated again

1 Daycon?

2 A. Okay. Meaning do you -- What do you mean do I support the
3 strike?

4 Q. Did you go out on strike?

5 A. Yes, I did.

6 Q. When the union called the strike, you went out, right?

7 A. Well, when I got off the bus, the strike line was there
8 and that's when I could not cross over, because the security
9 guards were there and also the signs were there.

10 Q. Well, you understand you could have, you could have
11 crossed over that line and gone to work. Do you understand
12 that?

13 A. I guess so.

14 Q. But you chose not to, right?

15 A. Yes, that's correct.

16 Q. I mean, and it's valid. I mean, you wanted to stay with
17 the union, right?

18 A. Well at that particular time I felt like I had no choice
19 but to be there with the union. Again, we had security guards
20 and a sign said "No Trespassing."

21 Q. Well, just to be clear, you understand that you could have
22 retained your job had you not honored the strike?

23 A. I don't understand that, and the reason why I said I don't
24 understand that, you're telling me that I could retain my job
25 if I wanted to, but if I would have crossed over, with the

1 security guards and the sign there, then how would I be able to
2 retain my job when you have someone telling us we can't.

3 Q. Well, what is the reason -- Is that the only one that
4 you've been on strike this whole time is because there's a
5 security guard out there?

6 A. Well, because -- Yeah, because basically we wasn't allowed
7 to come back in there. And I also spoke to someone about
8 getting my job back.

9 Q. When did you offer to return to work?

10 A. Actually, it was off records with me and the young lady by
11 the name of Erica Owings. I believe that's Erica's last name.
12 I had spoke with her one evening. She came over to speak to
13 me. This was about maybe a month after the strike.

14 She asked -- I asked her was I able to come back to
15 work and her expect words was "No. It would be better off if
16 you go and find you another job."

17 Q. And to that point, you had honored the picket line?

18 A. Yes. I had already honored it, yes.

19 Q. And you had been outside the building holding a strike
20 sign, right?

21 A. Yes, about, maybe about a week or more after that, yes.

22 Q. And had you received a letter that had informed you that
23 your job had been permanently replaced?

24 A. Yes. Four days after I was out there on strike.

25 Q. And that's back to my original point. Prior to receiving

1 that letter, you could have chosen not to honor the strike and
2 gone in and retained your job. You were aware of that, right?

3 A. Again, I don't see how I was able to cross over and go
4 when I had someone out there telling me I could not cross over,
5 or for me not to come across with the security and the sign
6 saying "No Trespassing."

7 Q. Were you aware that there were other employees who had
8 crossed and retained their jobs?

9 A. At that particular time, no.

10 Q. Okay. Did you want to return, but you just -- somebody
11 told you not to?

12 A. Nobody never told me anything.

13 Q. Okay. Did you attend the strike vote in February?

14 A. Yes.

15 Q. And did you attend another meeting with the union in
16 March?

17 A. I can't recall that one in March.

18 Q. Did you ever remember hearing from Kathleen McKircy from
19 the Metropolitan Council?

20 A. Not to my recall.

21 Q. Did anybody ever do a presentation to your recollection
22 that informed you about things that you might expect if you go
23 out on strike?

24 A. It was a lot going on that day, and I really can't recall
25 of everything that was said.

1 Q. You had received a letter from the company, had you not,
2 that informed you that if you went out on strike you would no
3 longer be paid and that your job could be permanently replaced?

4 A. I don't know anything about no longer being paid or
5 anything like that. I did -- The only letter that I received
6 from them was telling me that any job was replaced.

7 Q. Okay. Do you remember getting a letter from them in March
8 stating that if you chose to go on strike later that you could
9 lose year health care and that your job could be permanently
10 replaced?

11 A. No. The only letter I received is this right here,
12 telling me how much my health care would be if I decided to go
13 out on strike.

14 Q. And that's this, you're referring to General Counsel
15 Exhibit 80, is that a seven or a four?

16 THE COURT: Four, I believe.

17 MR. TRAPP: Eighty-four.

18 A. I guess so, sir. Yes, sir.

19 Q. The one that has the date March 17th on it?

20 A. Mines have March 16th or 18th. I can't see it that good,
21 but I believe it's the 18th.

22 Q. The document, let me put it up.

23 A. You talking about on the document or the day it was mailed
24 out? On this it says March 17th, if you talking about the
25 letter.

1 Q. Just want to make sure we're talking about the same
2 document. This is the document you're referring to, right?

3 A. Yes.

4 Q. Eighty-four.

5 A. Yes.

6 Q. And that tells you if you go on strike you will be
7 responsible for paying insurance at the COBRA rate of
8 102 percent of costs, right?

9 A. Yes.

10 Q. And that means you would no long have the company provided
11 health insurance, right?

12 A. That's what it says.

13 Q. And you knew that when you went on strike?

14 A. Well, I guess if they sent that to me, yes.

15 Q. And was COBRA information sent to you later on, after you
16 went on strike?

17 A. No.

18 Q. You never got any COBRA information?

19 A. If I did, I haven't received it to this day. I don't have
20 no recollection of it, no.

21 MR. TRAPP: Okay. Judge, I'm inclined not to make a
22 big deal about any of these things, but I might just state for
23 the record that, consistent with our prior conversation a
24 couple days back, that maybe to the extent that I feel
25 necessary after talking about it, that we could find some of

1 these documents and determine whether or not we want to revisit
2 any of this.

3 THE COURT: Okay. No problem.

4 Q. Are you currently receiving strike benefits, Ms. Taylor?

5 A. Yes, I am.

6 Q. How much do you get for strike benefits?

7 A. \$128.

8 Q. \$128, is that per week?

9 A. Per week.

10 Q. Every week since -- How long have you been getting them?

11 A. I guess since we been on strike.

12 Q. Since April of last year?

13 A. Yes.

14 Q. Okay. And do you have receive unemployment benefits?

15 A. Yes, I do.

16 Q. How much are those benefits?

17 A. I get \$298 per week, so I guess it's \$598 every two weeks.

18 Q. Okay. Do you have any other savings or sources of income
19 or anything like that?

20 A. No, sir.

21 Q. Have you sought insurance elsewhere?

22 A. I did. I went to the Department of Social Service and
23 applied for it, and they sent me a letter telling me that I was
24 not qualified for it, due to the fact that I don't have any
25 young children.

1 Q. That you do or you do not?

2 A. I do not.

3 Q. Okay. And that's the only reason you didn't qualify for
4 it?

5 A. That's what they said.

6 Q. Okay. Do you ever remember anybody or hearing any
7 information about being able to apply for emergency assistance
8 through the union affiliate, Metropolitan Council?

9 A. No, sir.

10 Q. Okay. Have you had any financial issues in the past?

11 A. I think we all have. I have at some point in time.

12 Q. Yeah. Okay. It's true, isn't it, that you took out some
13 401(k) loans in the past to pay for past rent to your landlord?

14 A. Yes.

15 Q. And your landlord was pursuing you in court to evict you
16 from your dwelling?

17 A. Yes.

18 Q. Okay. And that was prior to the strike, wasn't it?

19 A. No. I mean at that particular, before the 401(k) that was
20 prior, before the strike even came.

21 Q. Yeah. That's what I'm saying. This was --

22 A. Yes.

23 Q. -- a couple years ago.

24 A. That was before, right.

25 Q. And in years past, you've participated in some form of

1 rental assistance program through a state agency or Prince
2 George's County or something like that, is that right?

3 A. Say that again now. Repeat that question.

4 Q. You have participated in some kind of a rental assistance
5 program?

6 A. Yes.

7 Q. Okay. And that's been for several years as well, right?

8 A. Yes.

9 Q. And same question with an energy assistance program, you
10 participated in that in the past?

11 A. I haven't done that in years, but yes.

12 Q. Okay. And, Ms. Taylor, you're not a member of the
13 bargaining committee for the union, correct?

14 A. No, I'm not.

15 Q. And you didn't attend any bargaining sessions?

16 A. No, sir.

17 Q. If Daycon recalled your tomorrow, would you return to
18 employment?

19 A. Yes, I will.

20 MR. TRAPP: I think that's all I have. Thank you,
21 very much, Ms. Taylor.

22 THE WITNESS: You're welcome.

23 THE COURT: Any redirect?

24 MR. MARSHALL: No redirect, Your Honor.

25 THE COURT: Thank you, Ms. Taylor. That completes

1 your testimony and you are excused.

2 THE WITNESS: Thank you.

3 THE COURT: Okay. Do we want to resume Mr. Webber?

4 MR. MARSHALL: I have no further witnesses, Your
5 Honor, so Mr. Trapp is free to resume Mr. Webber.

6 THE COURT: Okay.

7 MR. TRAPP: Judge, it's -- I'll do it whichever way
8 you like. I can resume. I've probably got, I'm notorious for
9 going longer, so I've probably got another hour and a half.

10 THE COURT: Okay. Well, are you suggesting -- We can
11 take our lunch recess at this point, if you prefer. Why don't
12 we take 45 minutes and start at 1:00. Is that all right?
13 Okay. Good. See everybody back at 1:00.

14 (The lunch recess was taken.)

15 THE COURT: Okay. Where are we? Mr. Trapp, are you
16 ready to resume?

17 MR. TRAPP: I am, Your Honor.

18 THE COURT: Good.

19 CROSS EXAMINATION

20 BY MR. TRAPP:

21 Q. Good afternoon, Doug.

22 A. Good afternoon.

23 Q. I'm going to try to bring us back to where we were a
24 couple hours back. I'm going to put back on the screen here
25 your sheet that was attached to your December 13th Affidavit in

1 this matter and ask you some questions about it. And I'll try
2 to move a little quicker, I think, than I moved this morning.

3 But I would like to compare some of the strike pay
4 eligibility sheets from GC Exhibit 82 with the, your
5 characterization there in the document attached to your
6 Affidavit, okay.

7 A. Yes.

8 Q. So, I'll take you through something that I have done and
9 you tell me if you agree with it and we'll see if we can move
10 pretty quickly. If you turn with me to GC 82, to the strike
11 pay eligibility verification form that's for the week of
12 January 10th through January 16th. It's right towards the end.
13 I think it's the second to last week that's included in the
14 documents.

15 And, actually, let me ask you while you're doing
16 that, Doug, you talked a while back about some, when you pay
17 the strikers the strike pay benefits, do you have any sort of a
18 list or documentation that would show who was paid and how much
19 and when and how long it's been going on?

20 A. I sent it back to the International.

21 Q. So the International has it?

22 A. International is the one that generates the checks.

23 Q. Okay. But we could get that information if it became
24 necessary, right?

25 A. It's possible, from International, yes.

1 Q. All right. Did you find the week of January 10th to
2 January 16th on Exhibit GC 82?

3 A. Yes.

4 Q. All right. Now, I'm just going to go down alphabetically
5 and it looks like this list, they're all alphabetized as well,
6 so I'm just going to start at the top and work my way down and
7 compare each name with how they're characterized in your chart
8 attached to the Affidavit. Okay.

9 So, for Hasmon Abraham, he was classified as RAO
10 under your chart, which is "return after offer," I think. Is
11 that your consistent with your understanding? And Hasmon
12 Abraham is right down about in about the middle.

13 A. Correct.

14 Q. See that?

15 A. Yes.

16 Q. So he's classified RAO, which is "return after offer,"
17 right?

18 A. Yes.

19 Q. Which means he was striking and was subsequently recalled,
20 right?

21 A. Correct.

22 Q. So presumably he supported the strike, right?

23 A. Correct.

24 Q. Nathan Ackerman is down here at the bottom. He is
25 classified "SU," which I think is "status unknown."

1 A. Correct.

2 Q. Now, on him, and you don't have to look back with me, but
3 I noticed when I was fling through GC 82 that back in October,
4 the ones that we looked at before lunch, October, whatever it
5 was, 10th I think that week, he is listed as "quit." Do you
6 remember us going over that?

7 A. That's what I was told at the time, that he had quit.

8 Q. And that's why he is status unknown? We just know he's --

9 A. I don't know what notification he gave the company or
10 whatever, but I understand that he moved on.

11 Q. Okay. And that's why he's listed at status unknown?

12 A. Correct.

13 Q. He had supported the strike up to the point that he quit
14 and left.

15 A. From what I understand, early on he did.

16 Q. Okay. Let's go to the third one there on GC 82, Erin
17 Baker. He's listed right about here, and he's "ROS," which is
18 "remaining on strike," I believe, right?

19 A. Correct.

20 Q. So he's still on strike, right?

21 A. Correct.

22 Q. Then there is David Boone. He's listed, he's on the
23 second page here, see right here. He's listed as "ROS" as
24 well, right?

25 A. Yes.

1 Q. Remain on strike. Clarence Bratcher. And, actually, if
2 you're familiar with these or their status, maybe I could speed
3 it up by just saying I'll tell you what I classified them --

4 A. Um hum.

5 Q. -- and if you have a reason to disagree with that, then
6 jump if and let me know. Is that fair?

7 A. We'll see how we go with it.

8 Q. That way I won't put everybody to sleep. So, and I
9 checked these and I'll represent that I did the best I could on
10 it, so you just point out if I'm wrong on it.

11 Clarence Bratcher, I think we just said was remain on
12 strike. Robert Brice, remain on strike. Derrall Lavance
13 Bridges, remain on strike. Eugene Brown, remain on strike.
14 Lynette Burton, remain on strike. Rawle Daniels, remain on
15 strike. Thomas Geris, III, return after offer, right?

16 A. Correct.

17 Q. He's back at work, right?

18 A. Yes.

19 Q. Horace Griffin, Jr., remain on strike. Daniel Higgs,
20 remain on strike. Am I correct up to now?

21 A. Yes.

22 Q. Trevor Holder, remain on strike, right?

23 A. Yes.

24 Q. Darren -- Sorry. It's folded over. Koger.

25 A. Yes.

1 Q. Remain on strike?

2 A. Yes.

3 Q. David Limerick, remain on strike.

4 A. His status may have changed. I understand now that he may
5 be temporarily working somewhere.

6 Q. Okay. So, I'll write in "TE," I think is what you used on
7 your chart.

8 A. Right.

9 Q. Temporary employment, right.

10 A. Correct.

11 Q. And, by the way, I've written these down and I'll put them
12 on a screen here in a second. So he would be -- he was
13 remaining on strike and now you think he might be TE, right?

14 A. Correct.

15 Q. That's David Limerick. Then we turn the page, and I've
16 got some blanks in my document. Do you have those same blanks?

17 A. It must have been the way the copy machine put them on.

18 Q. Okay. Well, then, the next page for you then is, at the
19 top is Diarra Kamall Mackall?

20 A. Yes.

21 Q. And that was listed as "TE," temporary employment
22 elsewhere, right?

23 A. Yes.

24 Q. Ronnie McFadden, remain on strike?

25 A. Yes.

- 1 Q. Thomas McNeill, Sr., return offer offer.
- 2 A. Yes.
- 3 Q. Adalberto Mendez, remain on strike?
- 4 A. Yes.
- 5 Q. John Merritt, return after offer?
- 6 A. Yes.
- 7 Q. Stanley Eugene Miller, return after offer?
- 8 A. Yes.
- 9 Q. Gregory Mingle, temporary employment?
- 10 A. Yes.
- 11 Q. Ellis Parran, Sr., remain on strike?
- 12 A. Yes.
- 13 Q. Alvin Phoenix, Jr., remain on strike?
- 14 A. Yes.
- 15 Q. William Posey, recall after offer?
- 16 A. Yes.
- 17 Q. Robert Steven Redmond, recall after offer?
- 18 A. Yes.
- 19 Q. Michael Renteria, remain on strike?
- 20 A. Yes.
- 21 Q. Howard Robinson, recall after offer?
- 22 A. Yes.
- 23 Q. Victor Scurry, remain on strike?
- 24 A. Yes. He has since been recalled, I believe.
- 25 Q. Oh, yeah. Okay. Victor Scurry, then we'll change to RAO.

1 How that's.

2 A. Correct.

3 Q. Glenn Smith, remain on strike?

4 A. Yes.

5 Q. John, I think that one is Smith too, right?

6 A. Yes.

7 Q. John Smith, remain on strike. And then turning the page,
8 Brenda Taylor, remain on strike?

9 A. Yes.

10 Q. Hubert Taylor, recalled after offer?

11 A. Yes.

12 Q. Justin White, temporary employment?

13 A. Yes.

14 Q. Daniel Wiggins, temporary employment?

15 A. Yes.

16 Q. Dale Windsor, recall after offer?

17 A. Yes.

18 Q. I guess that's it. Wait a minute. Did I miss one?

19 A. John Day.

20 Q. Daniel Wiggins we said is temporary employment?

21 A. Yes.

22 Q. Dale Windsor -- Oh. Okay. I see it. Recall after offer?

23 A. Yes.

24 Q. And John Day was recall after offer, but who was omitted
25 off of your list, right? I think you said in your Affidavit

1 that you inadvertently left him off, but he was recalled.

2 A. Right. Yes.

3 Q. So we'll list him as RAO, right?

4 A. I believe so. Yes.

5 Q. I'll put a little note next to it on my sheet that says
6 "Omitted." Now, I'll put this up.

7 MR. TRAPP: Judge, can I put this up actually like
8 with my -- I wrote down what we --

9 THE COURT: It's like you wrote it on there. Go
10 ahead.

11 Q. So, there's what I've written down here, Doug. And let's
12 go through and you'll see where I've put these dots. Well, you
13 can't see the name now.

14 THE COURT: I think you can make it smaller.

15 Q. So, if it's really important I'll zoom back and forth on
16 it and get you to focus.

17 Let's go through this then. So we've got everybody's
18 status down here, and this is as of the week before the strike,
19 right?

20 A. Yes.

21 Q. At least the sheet on Exhibit 82 is the week, or I mean,
22 this is the week before -- Sorry. I said strike. The week
23 before the hearing that we had here on January 20th, right?

24 A. Correct.

25 Q. Okay.

1 MR. MARSHALL: Your Honor, can I ask Mr. Trapp just
2 to center that a little bit. I can't see the names.

3 MR. TRAPP: I'm sorry. I keep moving it.

4 Q. All right. Now, so Hasmon Abraham, he's recalled, so
5 that's the reason he's not showing up on the list as striking,
6 right?

7 A. Right.

8 Q. Nathan Ackerman. He quit back in October. He's status
9 unknown. That's why he's not showing up, right. We don't
10 expect him to be there?

11 A. Correct.

12 Q. Erin Baker. Now, him, he hasn't signed in this week, but
13 he still remains on strike, right? So he's one of these guys
14 that we don't know the status of, or we didn't know where he
15 is, right?

16 A. I don't know where he was at that week, yes.

17 Q. Okay. So I put a little dot here.

18 A. Okay.

19 Q. David Boone. He remains on strike and there he is on the
20 picket line, so he's still out there, right. Clarence Bratcher
21 is the same thing, correct?

22 A. Correct.

23 Q. And Robert Brice, looks like he showed up three times, I
24 guess, that week, right?

25 A. It appears to, yes.

1 Q. And that's about as much as you, right. So he's still
2 supporting the strike as far as you're aware, right?

3 A. He showed up on the picket line.

4 Q. Okay. Derrall Bridges, same thing?

5 A. Correct.

6 Q. He showed up that week. He remains on strike. Eugene
7 Brown there? Eugene Brown was there every day that week.

8 A. Yes.

9 Q. Lynette Burton, almost every day?

10 A. Yes.

11 Q. Rawle Daniels every day?

12 A. Yes.

13 Q. Thomas Geris was recalled, so we wouldn't expect him to be
14 there, right?

15 A. Correct.

16 Q. Horrace Griffin remains on strike and there he is on the
17 picket line, correct?

18 A. Yes.

19 Q. Daniel Higgs. I put a dot next to him because he's not
20 here this week either?

21 A. Connect.

22 Q. And yet he's remaining on strike, so he's another guy that
23 I'll put a dot next to and come back, all right?

24 A. Okay.

25 Q. Trevor Holder remains on strike and there he is on the

1 picket line.

2 A. Yes.

3 Q. Darren Koger, he remains on strike. This was a note that
4 I did. We don't know where he was exactly?

5 A. Not that particular week.

6 Q. But if you flip a couple pages forward, and I'll just put
7 this up real quick, looks like on the 21st he showed up like
8 the day after the hearing, right?

9 A. Again, as I explained earlier, I don't know sometimes
10 where the sign-in sheet is at as the day goes on. Sometimes if
11 the guys show up late in the day the sign-in sheet has already
12 gone home for that day.

13 Q. Okay.

14 A. This is just a preliminary way of trying to keep track
15 somewhat of where the people are at and what they're doing.
16 But as far as its accuracy, as I said earlier, that this is not
17 a hundred percent accurate, but it's the best that we have to
18 go by right now.

19 Q. Yeah. It's like it's a rough guide.

20 A. It's a guide.

21 Q. Okay. And Darren Koger remains on strike, and he's not
22 here this week, but do we have any reason to think that he's --

23 A. Again, you keep saying he wasn't there that week. I don't
24 know if he's been there that week or not. There's no
25 signatures on the spot.

1 Q. Okay.

2 A. But that may be because the sheets were not available for
3 him.

4 Q. Okay. So Darren Koger might have been out there?

5 A. He may have been.

6 Q. Yeah.

7 A. He may have been.

8 Q. And that's my point. I didn't put a dot next to him
9 because it doesn't look like he's missing in action, at least
10 according to the sheet from the next week.

11 A. Okay.

12 Q. Right?

13 A. It appears to be. Yes.

14 Q. Okay. Now, David Limerick, he wasn't here this week, but
15 he was remain on strike, but you think he secured temporary
16 employment, right?

17 A. Correct.

18 Q. So that's why I wrote that next to it, so we wouldn't
19 expect him to be there on strike either, right?

20 A. Correct.

21 Q. So that dot, we can eliminate that dot, I think. So on
22 this page there's really two people that we would say "I wonder
23 where these guys are," right, Erin Baker and Daniel Higgs?

24 A. Correct.

25 Q. Okay. And everybody else, the people who we expect to

1 strike, are striking, correct?

2 A. Correct.

3 Q. So, let's go on to the next page, and here we're got
4 Diarra Kamall Mackall, temporary employment. So, is Diarra a
5 male or female, do you know?

6 A. Male.

7 Q. Okay. So he's gone that week, but he's working somewhere
8 else, so we don't expect him to be there, correct?

9 A. Correct.

10 Q. Ronnie McFadden was there every day that week and he
11 remains on strike, so nothing unusual there. Thomas McNeill
12 was recalled, so that's why he's not there, right?

13 A. Correct.

14 Q. Adalberto Mendez, he remains on strike but he wasn't there
15 that week, right?

16 A. Again, I don't know if he was there or not. Just because
17 their signature is not on here does not necessarily mean they
18 weren't.

19 Q. Okay.

20 A. But it appears that if you're going on this, he was not
21 there.

22 Q. Okay. Well, let's -- I'm putting a dot next to people
23 that I was thinking, you know, we might have a further question
24 about. Should that dot be there or not? I mean, like
25 Adalberto, do you think that he's still supportive of the

1 strike or not?

2 A. I believe I mentioned his name earlier. I think that the
3 support has waned from the him. I don't think the level of
4 support is there as it was back in April or May.

5 Q. Is he the only one that's true of or, I mean, that's true
6 yourself as well, right?

7 A. That's not true of myself.

8 MR. MARSHALL: Objection, Your Honor. That
9 mischaracterizes.

10 THE COURT: Okay. I don't think that's fair and he's
11 not an employee of Daycon, so let's not compare the two.

12 Q. If, well, I mean, if we gauge it just based on attendance
13 at the picket line is my point, that that's probably dipped for
14 most people since the beginning. Is that accurate?

15 A. It's not based just on attendance on the picket line.

16 Q. Okay. What else are you basing it on for Adalberto?

17 A. Pardon me?

18 Q. What other information are you basing it on as it pertains
19 to Adalberto Mendez?

20 A. Well. One is for they have to be paid up on their dues is
21 a requirement, and participation on the picket line. And,
22 again, these are indicating that they're not there. I can't
23 testify there's a reason as to why their name is not on here.

24 One of the reasons could be that the form was not
25 there.

1 Q. Okay.

2 A. The other reason could be that he had personal issues and
3 could not be there.

4 Q. Okay. Well, all I'm trying to figure out here is I put a
5 dot next to him. Should I leave that dot, which indicates that
6 he is somebody we're going to follow up on. He wasn't there
7 and we were wondering why, as least according to this sheet?

8 A. Okay. You can leave your dot there.

9 Q. Okay. So, then, John Merritt, he was recalled after the
10 offer, so that's why he's not there, right?

11 A. Recalled back to work, yes.

12 Q. And Stanley Miller, same thing?

13 A. Yes.

14 Q. Greg Mingle, he's got temporary employment elsewhere, so
15 that's why he's not there. Ellis Parran was there and he
16 remains on strike, so nothing unusual with that, correct?

17 A. Correct.

18 Q. Alvin Phoenix was on the picket line that week and he
19 remains on strike, correct?

20 A. Correct.

21 Q. William Posey, Sr., he was recalled, so that's why he's
22 not on the picket line, right?

23 A. Correct.

24 Q. Robert Steven Redmond, same thing with him. He was
25 recalled, which explains his absence from the picket line,

1 right?

2 A. Correct.

3 Q. Michael Renteria remains on strike, but I put a dot next
4 to him because he's not, he wasn't there that week. Is that
5 fair?

6 A. You can only assume that he was not there that week
7 because his signature is not on here.

8 Q. Yeah. And that's what I'm -- I mean, I can only go by
9 what the sheet is, so I'm going with what I've got.

10 A. Yeah.

11 Q. But that's why I put a dot there. Is it fair to have a
12 dot next to Michael Renteria indicating that --

13 A. That he did not sign the sheet that week.

14 Q. Okay. Well, in my parlance, I'm putting a dot next to it
15 as somebody we might want to follow up on to see where he was.
16 Somebody who we might question, are they supporting the union
17 or not?

18 A. Okay.

19 Q. Is that fair to leave the dot next to him then, in your
20 estimation?

21 A. That's your schematic. I mean --

22 Q. Well, I'm asking -- That's why I'm asking you. That's any
23 standard for putting a dot there. Should I put one next to
24 Michael Renteria or not?

25 A. According to your standard, yes.

1 Q. Okay. Now I'm asking you to apply my standard to Michael
2 Renteria. Should I put a dot next to Michael Renteria as
3 somebody who might not be supportive of the union?

4 A. Correct.

5 Q. Okay. Then Howard Robinson. He was recalled, so that's
6 why he's not there, right?

7 A. Correct.

8 Q. And Victor Scurry we had as remain on strike, so I put a
9 dot. But I think we've explained it now by you telling me that
10 he was recalled after the offer, right?

11 A. Correct.

12 Q. So we can take off that dot, right?

13 A. Correct.

14 Q. Glenn Smith. He was there that week and he remains on
15 strike, correct?

16 A. Yes.

17 Q. John Smith, the same thing. He was there that week and
18 remains on strike?

19 A. Yes.

20 Q. And then, on the last page, or the next page of GC 82,
21 Brenda Taylor was there that week and she remains on strike?

22 A. Yes.

23 Q. Hubert Taylor was recalled after the offer and that's why
24 he's not there, right?

25 A. Yes.

1 Q. Justin White is working somewhere else, so he wasn't
2 there, right?

3 A. Yes.

4 Q. Daniel Wiggins was working somewhere else, so he wasn't
5 there, right?

6 A. Yes.

7 Q. And Dale Windsor was recalled, and so he's not on the
8 strike line, right?

9 A. Correct.

10 Q. And John Day was recalled, and so he's not on the strike
11 line as well, right?

12 A. Yes.

13 Q. Okay. So, thanks for helping me through that. Now we'll
14 go back and we'll look at some of these dots. The people that
15 I've sort of compiled here then as we went through that that we
16 would say that "Gee, they probably should have been on the
17 picket line some time that week but they weren't."

18 Looks like we would have Erin Baker, Daniel Higgs,
19 Adalberto Mendez and Michael Renteria. Is that fair?

20 A. Okay.

21 Q. Okay. So four people who we sort of pared it down to
22 these four people that we would expect to be out there at least
23 at some point but they, looks like they weren't anyway,
24 according to the sheet, right?

25 A. According to the sheet.

1 Q. Now, let's look here. So, Erin Baker. I went through the
2 sheets and I'll represent to you and you can tell me if this is
3 anything different, or we can flip through it if you want.
4 Looks like the last date that he was on the strike line and
5 signed the picket list was November 5th. Does that comport
6 with your understanding that you haven't seen him out there for
7 two months or so?

8 A. I've seen him out this since then, but I don't know how
9 often and what days.

10 Q. So Erin Baker has been out there since November but he
11 just doesn't, well, at least in my brief review, he doesn't
12 appear to have signed in.

13 MR. MARSHALL: I'm going to object, Your Honor.

14 THE COURT: Okay. You couldn't testify, Mr. Trapp.
15 I mean, I can look at this exhibit myself and you can tell me
16 in closing what you think it shows.

17 MR. TRAPP: Okay.

18 Q. In the last couple months you have seen Erin Baker on the
19 line, right?

20 A. Occasionally, yes.

21 Q. Do you have any reason to think that he is no longer
22 supportive of the union or its goals?

23 A. When you look at this as an overview, you can see from the
24 beginning in April to the end in January, that there definitely
25 is a downturn. And also the conduct on the picket line, where

1 I stated earlier where I have to come out there and let people
2 know what their responsibilities are and what's needed to be
3 done on the picket line.

4 Q. Is Erin one of those people that you have to remind?

5 A. If he's in the group as I'm reporting out, yes.

6 Q. Okay. His support might have waned, but do you have any
7 reason to believe that he no longer wishes to affiliate with
8 the union?

9 MR. MARSHALL: I'm going to object, Your Honor.

10 THE COURT: Overruled.

11 A. I don't have that indication from him.

12 Q. And you have been in contact with him in the last couple
13 months?

14 A. I have seen him, yes.

15 Q. And now let's go to Daniel Higgs. I reviewed the records
16 and it looked like he was on the strike line in the week of
17 December 10th and December 15th. Have you seen Mr. Higgs out
18 on the strike line in the last couple months?

19 A. I don't know if it's a couple months. It's been quite
20 some time since I've seen him.

21 Q. Okay. Same question with Mr. Higgs as for Mr. Baker. Do
22 you have any reason to believe that he no longer supports the
23 union?

24 A. He has not told me that.

25 Q. Okay. Now, let's go to Adalberto Mendez. And him, I

1 think we had gone over a little bit before lunch. I think we
2 went through some of the records and we showed that he looked
3 like he was pretty consistent, even up through December, as far
4 as he was picketing the whole week of Christmas Eve and on
5 Christmas Eve, right?

6 A. Correct.

7 Q. Have you seen him at the strike line since the new year?

8 A. Yes.

9 Q. And do you have any reason to believe that he no longer
10 supports the union?

11 A. He hasn't told me that, but I would think that his
12 participation level was very high at the beginning, and then
13 toward the end it has trailed off.

14 Q. Okay. And we'll turn to the last one here of the dotted
15 strikers, for lack of a better word, Michael Renteria. I went
16 back and looked and it looked like he was on the strike line in
17 November, the week of November 5th, I think, and then
18 December 17th. Have you seen Mr. Renteria at the strike line
19 in the last two months?

20 A. Occasionally, yes.

21 Q. So he comes out there every once in a while?

22 A. Yes.

23 Q. Does he hold a sign and walk around?

24 A. He was probably in the group that I addressed last week.
25 As I said earlier, that the participation level, it's not good

1 enough just to be out there. We have to do some activities out
2 there.

3 Q. Meaning put on a sign, walk around, chant or, you know,
4 picket?

5 A. Normal picket line duties, yes.

6 Q. It's not just a matter of showing up and sitting there.

7 A. Yes.

8 Q. Get up and do something, right?

9 A. Correct.

10 Q. And you had to tell Mr. Renteria that as recent as last
11 week?

12 A. If he was within that group that I reported out. You
13 know, not only last week but the last, every couple weeks I
14 have to go out there and let them know we have to pick up the
15 level of participation.

16 Q. Okay. Well, then, those are the four people on the dots
17 and we've now covered them. So I'll ask you, do you have any
18 reason to believe that anybody who we didn't put a dot next to
19 or who we didn't just discuss is no longer supportive of the
20 union or its goals.

21 A. I believe that, again, overall, that the support has gone
22 down and that's why I reported out that I have to have group
23 meetings out there occasionally to get the support, to get the
24 activities levels to come up.

25 Q. Well, are you still paying, let's just go through those

1 four. Are you still paying Erin baker strike benefits?

2 A. Yes.

3 Q. And what about Daniel Higgs, is he still getting strike --

4 A. Well, at times when they're behind in their union dues
5 they have been cut off, so I don't have the records of that.

6 Q. So, it's not just a matter of showing up on the strike
7 line. If you show up on the strike line but you're behind on
8 your dues, you might also lose eligibility for strike pay,
9 right?

10 A. Correct.

11 Q. And that's happened with Erin Baker?

12 A. I don't know.

13 Q. Erin Baker, I think you said still receives the strike
14 benefits, right?

15 A. They have an opportunity to pay their dues back if they're
16 late, to get back on into the cycle of other strike benefits.

17 Q. And to be clear then, is Mr. Baker receiving strike
18 benefits or not?

19 A. I would assume that he is now, yes.

20 Q. Okay. And how about Daniel Higgs?

21 A. Daniel Higgs, no.

22 Q. How long has it been since he has received strike
23 benefits, in your estimation?

24 A. A month, six weeks.

25 Q. And that's because of lack of participation at the strike

1 line?

2 A. Yes.

3 Q. Any other reason why? Is he behind on his dues?

4 A. Yes.

5 Q. Okay. And then, Adalberto Mendez, is he receiving strike
6 benefits?

7 A. Yes.

8 Q. And Michael Renteria, is he receiving strike benefits?

9 A. Yes.

10 Q. Okay. I'll ask you the question again. I'm sorry if I'm
11 repeating it, because I must have just lost it if you answered
12 it. But do you have any reason to believe that anybody else
13 that was on that list that you attached to your Affidavit on
14 December 13th doesn't support the union, other than they don't
15 show up as much at the strike line?

16 A. I believe it's pretty accurate.

17 Q. That that statement is pretty accurate? That you're --
18 tell me what you mean by saying that's accurate.

19 A. Tell me what the question was again.

20 MR. MARSHALL: Your Honor, I'm going to object. If
21 Mr. Trapp can rephrase that question.

22 THE COURT: He's going to have to. The witness says
23 he doesn't really know what he's supposed to answer.

24 Q. I'm saying, other than a lack of participation as
25 evidenced by the strike verification sheets, do you have any

1 reason to believe that anybody who we didn't -- who we didn't
2 just discuss, is in longer supportive of the union or it's
3 goals?

4 A. Again, overall the level of support has diminished,
5 because I have to find myself consistently going out there to
6 try and instruct them and give them tips on what needs to be
7 done to have an effective picket line in front of the business.

8 Q. Okay. Nobody has directly told you "I no longer support
9 the union," right?

10 A. No.

11 Q. I'm going to get rid of these documents, if you give me a
12 second, and we'll go on. Okay. Now, let's see. Do you have
13 access to the bulletin board at Daycon?

14 A. There is a bulletin board there, yes.

15 Q. And do you use it to communicate with the employees there?

16 A. Occasionally.

17 Q. What sort of stuff do you put on the bulletin board?

18 A. Most recently there's notifications of upcoming delegates
19 elections.

20 Q. So there's -- when you say "most recently," how recent is
21 that?

22 A. Within the month of January.

23 Q. Okay. So you have access to and have used the bulletin
24 board at Daycon to communicate with the employees out there?

25 A. I have given the document to be posted on the board. I

1 have not personally put it on the board.

2 Q. Now, let now let me ask you, Doug, tell me in your
3 estimation how has the union been irreparably harmed by
4 Daycon's actions since you offered the reinstatement?

5 MR. MARSHALL: Your Honor, I'm going to object. That
6 seems to call for a legal conclusion.

7 THE COURT: I'll sustain it.

8 Q. Tell me how, what sort of harm the union has suffered
9 since then, since July 2nd?

10 A. We often wonder, because of the duration, of what this is
11 going to look like at the end of the time when we can get to an
12 agreement. I think the support has shown in these documents
13 that the level of the participation is not there. Whether they
14 show up at the picket line or other not, it's not there.

15 I think the members are looking for help and
16 assistance from the International, from us to get an agreement
17 so they can get back on with their lives. I think the company
18 has demonstrated that they're willing to violate the law,
19 continue violating the law. They want to reap the benefits to
20 their advantage to get a contract under their terms.

21 I don't know how we can bargain in the future fairly
22 and equally to walk away with an agreement that's going to be
23 liveable with the company and with the workers.

24 Q. Is that all the harm?

25 A. Membership has already waned. We've got resignations.

1 We're got --

2 Q. I want to stop you there for a second. All those
3 resignations occurred right after the strike, right?

4 A. Early on, yes.

5 Q. And they didn't happen after the offer that you made on
6 July 2nd, correct?

7 A. Correct.

8 Q. Okay. Anything, any other kind of harm?

9 A. We're going to have a mixed work force. We've got a mixed
10 work force now.

11 Q. What do you mean "mixed work force?"

12 A. Well, compiled of members that have resigned, replacement
13 workers and members that have been recalled. There's a lot of
14 animosity in there.

15 Sooner or later we're going to get to a collective
16 bargaining, reach a tentative agreement that's going to have to
17 be ratified. Some people are going to be able to vote, some
18 people are not going to be able to vote.

19 Q. How do you know there is animosity in there?

20 A. Over the course of nine months, you hear a little bit
21 about what's going on in the inside.

22 Q. And tell me if I'm right in this. Are you referring to
23 animosity between union members that have been recalled versus
24 those who may have not struck or their permanent replacements?

25 A. There may be some tensions there. Also with the

1 replacement workers.

2 Q. What's the, just so I'm clear, what's the union's position
3 with regard to, what are your feelings toward the replacement
4 workers?

5 A. I don't believe they should be in there.

6 MR. MARSHALL: Objection, Your Honor.

7 THE COURT: Wait a minute. Wait a minute. Who are
8 you asking him to speak on behalf of here, himself personally,
9 the local?

10 MR. TRAPP: The union.

11 THE COURT: And what do you mean --

12 MR. MARSHALL: How does the union regard the
13 replacement workers.

14 THE COURT: Does the union have an official position
15 as to how they should be treated by union members who are back
16 to work? Is that something you want to know?

17 MR. TRAPP: Sure.

18 THE COURT: I mean, let's be a little more precise
19 here. Is there any official position as to how returning union
20 members should treat replacement workers on the job? Mr.
21 Webber, is there any official union policy on that?

22 THE WITNESS: Our position has been that if you are
23 recalled, go back to work and do a fair day's work for a fair
24 day's pay and try to obey the rules and do what's necessary to
25 continue working there. How they want to treat coworkers of

1 whatever category is up to them. I don't dictate their
2 personal lives.

3 Q. That's fair enough. I driving, I think -- I should have
4 been more clear, I think. I'm driving at -- when you say a
5 mixed work force, I'm trying to get exactly what that means and
6 it sounds like you mean there are those members that have stuck
7 with you and there are those that haven't?

8 MR. MARSHALL: Your Honor, I'm going to object. He
9 answered that question.

10 THE COURT: Well, I'm not sure. But use your words.
11 What do you mean by a mixed work force?

12 A. You're got the initial ones that crossed. You've got the
13 replacement workers, then you've got ours that have been
14 recalled. So each one of those categories is going to have
15 different thoughts and visions of what should be in a
16 collective bargaining agreement.

17 Q. Okay. Let's go on and talk a little bit about the request
18 for the injunction. Do you understand that the Board has asked
19 for three different remedies here?

20 A. Correct.

21 Q. And those remedies are an order that Daycon bargain with
22 the union upon request, right?

23 A. Bargain fairly, yes.

24 Q. And to rescind the changes upon request?

25 A. Correct.

1 Q. And an order of reinstatement, right?

2 A. Correct.

3 Q. I want to talk just a minute about each one of those.

4 Now. The Board moved for the bargaining order, but upon
5 request of the union. Now, just to be clear, the union hasn't
6 requested to bargain since last July, right?

7 A. Correct.

8 Q. Do you think that -- do you think it's necessary to have a
9 bargaining order?

10 A. We had sent the company a letter back in July, if I
11 remember correctly, saying that once some of these conditions
12 were met, we could get back to the bargaining table where we're
13 on equal, fair ground to bargain a new collective bargaining
14 agreement.

15 Q. And some of those conditions would be rescission?

16 A. Correct.

17 Q. And reinstatement?

18 A. Correct.

19 Q. And then you'll bargain, right?

20 A. No.

21 Q. Okay. Tell me what I missed.

22 A. That would be part of the bargaining. We still have a
23 contract that's expired. We want to get to a contract, and
24 part of our request at this time is that the members be put
25 back to work as a whole, based on these proceedings, based on

1 the November proceedings.

2 Q. Right. That's what I'm saying. I mean, as far as these,
3 the bargaining order goes hand in hand, in your mind, in your
4 position, and I'm referring to the union here, to be clear. In
5 the union's position, the bargaining order goes hand in hand
6 with reinstatement of all the employees and rescission of the
7 terms, right?

8 A. Those are the three things that we're requesting, yes.

9 MR. MARSHALL: Your Honor, I'm going to object
10 because I think that is somewhat of a mischaracterization of
11 who the Petitioner is and who Mr. Webber is.

12 THE COURT: Um hum. It's what the NLRB wants.

13 MR. TRAPP: But I'm driving at the union's position
14 back in July. That's what they wanted too.

15 THE COURT: Well, then you can phrase it that way,
16 not as to what I am being asked to order. Okay.

17 Q. Let me back up then. The things that the Court is being
18 asked to order are the same things that you were looking for
19 back in July, right? You being the union.

20 A. Basically, yes.

21 Q. And they go, from the union's position back in July, the
22 union refuses to bargain unless and until there is
23 reinstatement and rescission, right?

24 MR. MARSHALL: I'm going to object, Your Honor. That
25 mischaracterizes the nature of the --

1 THE COURT: Okay. No. I'm going to overrule the
2 objection. Go ahead.

3 A. What was the question again?

4 THE COURT: Go ahead and rephrase.

5 Q. The union's position as to bargaining is it refuses to
6 bargain unless and until the company reinstates and rescinds
7 the changes, correct?

8 A. We thought it would be unfair for the union to bargain and
9 let the company benefit by violating the labor law and expect
10 us to go to the bargaining table to try and get to a CBA.

11 Q. Right. I mean, you were testifying on direct, I think,
12 about how the union refuses to bargain as if this were an
13 economic strike, right?

14 A. Correct.

15 Q. And so unless and until the company views it as an unfair
16 labor practice strike and reinstates and rescinds the changes,
17 the union will not bargain, correct?

18 A. I don't know if that's correct for in the future. We feel
19 that we're definitely at a disadvantage right now. That's why
20 November is coming on and that's why we're sitting here today
21 is because of the amount of time that has gone by. And we're
22 waiting for some direction, some decision to be made that we
23 feel comfortable with proceeding with.

24 We right now feel like we're at a disadvantage to sit
25 down at the bargaining table.

1 Q. And let me phrase that then. You might feel differently
2 in the future, but going back to July, that has been your
3 position, right, that you're bargaining only if the company
4 views this as an unfair labor practice strike and acts
5 accordingly, right?

6 A. Correct.

7 Q. Okay. Now, let's talk an minute about the rescission
8 order that is requested here from the Court. This is, again,
9 requested upon request of the union. I assume that the union
10 wants the rescission order based on the dialogue that we just
11 had, right? They want the changes to be rescinded?

12 A. We want to go back to where we were the day before the
13 strike and bargain a fair contract.

14 Q. Okay. So that includes, I mean, the only change that
15 you're aware that the company has implemented is the wage
16 increase, correct?

17 A. Only one that I'm aware of.

18 Q. Okay. And that's what you want rescinded, correct?

19 A. I want to go back, reset the clock to where we were before
20 the company violated the law and sit down and negotiate a
21 contract.

22 Q. Which would rescind the wage increase, right?

23 A. Ultimately that would happen, I'm assuming.

24 Q. Okay. Well the implementation of the wage increase was
25 what precipitated the strike. That's what we talked about this

1 morning, right?

2 A. Correct.

3 Q. And so the wage increase is a big enough deal to the union
4 that, tell me if I'm wrong in this position, but from the
5 union's standpoint that undermines their authority to such a
6 degree that they won't have it.

7 A. We thought to get bargaining moving forward, and that it
8 wouldn't be fair for us to keep that demand on the company when
9 they're the ones that started this by violating the law, let's
10 reset the clock to where we were on April 21st and continue
11 bargaining and get to an agreement.

12 Q. And then on reinstatement, again, this just goes, you
13 agree with the requested remedy from the Court because it
14 comports with the union's position, right, that this is a ULP
15 strike?

16 MR. MARSHALL: Your Honor, again, Mr. Trapp is
17 mischaracterizing. The union isn't requesting anything.
18 National Labor Relations Board is requesting something.

19 MR. TRAPP: I'm sorry. I thought I said that he
20 agrees with what the Board is requesting from the Court.

21 THE COURT: Okay. Go ahead, but I think that's
22 pretty obvious, that one is.

23 MR. TRAPP: I keep jumbling them up.

24 Q. Okay. So, I guess each of these three things that are
25 requested by the Board would comport with your understanding of

1 going back to April 22nd and reset the clock right there,
2 right?

3 A. Basically, yes. We're not the ones that did, declared
4 impasse and implemented it.

5 Q. Okay. Now, between the date of the strike which was, I
6 believe, April 26th, right?

7 A. Correct.

8 Q. And early July, there was no request to bargain from the
9 union, right?

10 A. There was a request of the company to meet during that
11 period of time.

12 Q. And that was in early July, right?

13 A. That was April 1st.

14 Q. No. I mean since the strike started on April 26th?

15 A. Right.

16 Q. Once the strike started on April 26th --

17 A. Okay. Gotcha.

18 Q. -- there was no request to bargain from the union until
19 July, right?

20 A. I think there was some attempts there. There was a lot of
21 emails that went back and forth, and we set up the date of
22 July 13th.

23 Q. Yeah. But it was initiated in early July, I think
24 July 2nd, right?

25 A. Correct.

1 Q. And then the parties agreed to meet on July 13th, right?

2 A. Correct.

3 Q. And so when you requested bargaining, the company agreed
4 to it, correct?

5 A. Correct.

6 Q. And you testified a little bit about what occurred on
7 July 13th. And I'll take you through some of this. This will
8 be, I guess, I think it's General Counsel 45, before the ALJ.
9 So let me put that up on the screen, Doug. Do you see that
10 document?

11 A. Yes.

12 Q. And those are your notes from July 13th, right?

13 A. Yes.

14 Q. And you went through some of these on direct, right?

15 A. Yes.

16 Q. And let me go to page two of that document. I'll direct
17 you to the top portion there. Says "Union proposal verbally,"
18 so you made a verbal proposal there on July 13th, right?

19 A. Yes.

20 Q. And this was a five year agreement, so that's the term of
21 the contract is five years, right?

22 A. Yes.

23 Q. A five year wage progression from date of hire?

24 A. Yes.

25 Q. And this means an employee from the date of hire would

1 reach the top rate in five years, right?

2 A. Correct.

3 Q. The third part is the participation in the pension
4 agreement is in the fourth year?

5 A. Yes.

6 Q. And the fourth and last part of the proposal is to reduce
7 the hourly rate increase to 55 cents per hour, right?

8 A. Correct.

9 Q. And that's from the position of 65 cents per hour that it
10 was previously, right?

11 A. Correct.

12 Q. Now, you testified in front of the Administrative Law
13 Judge, Judge Biblowitz, that you had proposed a five year
14 agreement on April 22nd, right?

15 A. Correct.

16 Q. And so this number 1 here on July 13th, that's no
17 different from where it was on April 22nd, right?

18 A. Correct.

19 Q. That's according to you. I mean, I know there's a
20 disagreement as to whether or not you proposed it, but
21 according to your testimony and your recollection, you proposed
22 a five year agreement on April 22nd and you did so again on
23 July 13th, right?

24 A. It was discussed with the company on April 1st, April 22nd
25 and again here.

1 Q. Yeah. Well, in any event, your position is that you had
2 already proposed a five year agreement previously, right?

3 A. Yes.

4 Q. Okay. Now, so number 2, this is the five year wage
5 progression to top rate, and your testimony before the ALJ with
6 regards to that was that you had already proposed that on
7 April 22nd as well, right?

8 A. Correct.

9 Q. So, again, this is the same thing as previous, right?

10 A. Correct.

11 Q. And you agreed, I believe, before the ALJ that the wage
12 progression to top rate was the primary issue of these
13 negotiations, right?

14 A. It was a strong issue. We had many issues left.

15 Q. Number 3 was a participation in the pension agreement in
16 the fourth year of the agreement, right?

17 A. Correct.

18 Q. Now, this is something that hadn't been brought up since
19 January in negotiations, correct?

20 A. It was brought up in negotiations, whether it was January,
21 I'm not sure.

22 Q. Okay. Well, as far as the last three meetings previous,
23 on March 17th, on April 1st and April 22nd, the only topic that
24 was discussed was the wage progression, right?

25 MR. MARSHALL: Objection, Your Honor. That

1 mischaracterizes it.

2 THE COURT: Either that's right or that's not right,
3 from your recollection.

4 A. Could you rephrase the question again, or state it again.

5 Q. On March 17th, on April 1st and on April 22nd, the topic
6 that was discussed at those three meetings was wage progression
7 to top rate, correct?

8 A. That was one of the topics.

9 Q. Okay. In the -- I don't the transcript here in front of
10 me. I'll just have to point to the transcript I think maybe in
11 argument, Judge.

12 THE COURT: Um hum.

13 Q. But what were some of the others issues that you feel were
14 discussed at those meetings?

15 A. I believe on March 17th, I believe that I gave the company
16 a list of outstanding language issues as well.

17 Q. Okay.

18 A. So that's one of the meetings that you were talking about.

19 Q. How about on April 1st. Would you agree with me that the
20 sole item that was discussed between the parties was the wages
21 and the wage progression?

22 A. That was a discussion to get us on track, to move
23 negotiations along, yes.

24 Q. Okay. And on April 22nd, the discussion was about the
25 wage progression concept as well, right?

1 A. On April 22nd we were prepared to negotiate around the
2 clock. When the company went down the hall and then abandoned
3 ship, we couldn't continue negotiating.

4 Q. I appreciate that. But the topic that was discussed
5 before that happened was wage progression, right?

6 A. That was the initial.

7 Q. And, in fact, one be of the least things that Mr. Crupin
8 said before the parties broke was "Are you committed to wage
9 progression?" and you said "Yes," right?

10 A. He said that before they went to caucus, yes.

11 Q. Right. A caucus from which there was no return, according
12 to you, right?

13 A. Correct.

14 Q. And so the pension had not come up in the discussions on
15 March 17th, on April 1st or April 22nd, correct?

16 A. I don't believe. We couldn't get there on April 22nd.

17 Q. So, the answer is yes, that's correct. It had not come
18 up, right?

19 A. It could have come up, is what my answer is.

20 Q. A lot of things could have come up, but it didn't, right?

21 A. It was not discussed because we expected the company to
22 come back and continue bargaining.

23 Q. Okay. And, in fact, the company had rejected the pension
24 proposal in January, right?

25 A. They rejected the proposal as far as being implemented on

1 the first year of the agreement.

2 Q. And has, you know, we went through this in front of the
3 ALJ too, but the company negotiated out of the pension plan
4 1980, correct?

5 A. Whatever year it was, it did happen.

6 Q. A long time ago?

7 A. Yes.

8 Q. And the union has proposed on numerous negotiations over
9 the last several decades for the company to get back in the
10 pension plan, right?

11 A. I know I have, yes.

12 Q. And the company has rejected that proposal every single
13 time, right?

14 A. As it was proposed at those negotiation sessions, yes.

15 Q. Okay. And they rejected it as it was proposed at this
16 negotiation session as well, right?

17 A. As of July 13th, yes.

18 Q. And back up to January, it was rejected in January too,
19 wasn't it?

20 A. They rejected it then as far as initial participation,
21 yes.

22 Q. Okay. And then turning to the fourth item, the reduce the
23 hourly rate increase 55 cents per hour. Now, at this time the
24 company had already implemented a 60 cent increase for the
25 employees not at top rate, right?

1 A. Correct.

2 Q. Given that the -- Well, you made this proposal verbally on
3 July 13th, right?

4 A. Correct.

5 Q. Did you propose any sort of dollar amount for the
6 contribution to the pension?

7 A. I don't know. I did initially when the proposal came out
8 in January.

9 Q. And tell me if I'm wrong about this, see if you remember
10 it the same way that I did, but in January when you made the
11 proposal as to the company's participation in the pension, it
12 was to participate at a dollar in the first year, a \$1.50 in
13 the second year and \$2.00 per hour in the third year, right?

14 A. That may be accurate. I don't have it here in front of
15 me.

16 Q. Okay. And so this proposal in the fourth year of the
17 agreement, do you know if you said a dollar, \$1.50 or \$2.00?

18 A. I don't believe I gave a rate.

19 Q. Okay. And the only prior rate that had been given to the
20 company was between a dollar and \$2.00 per hour over the course
21 of an agreement, right?

22 A. Correct.

23 Q. And so in light of the participation in the fourth year of
24 the agreement in the pension of between a dollar to \$2.00 an
25 hour, and there is a rate decrease in the salary of just a dime

1 per hour, right?

2 A. Correct.

3 Q. So your proposal, as far as economically, and I get that
4 it's not until fourth year, but from that fourth year on that
5 would be a tremendous increase, correct?

6 A. I'm not sure I follow you.

7 Q. Well, if the company, instead of your prior proposal,
8 which was 65 cents per hour, the company would now be paying a
9 dollar to \$2.00 per hour for the pension and saving a dime on
10 the salary?

11 A. Correct.

12 Q. So they would actually come out worse off economically
13 under that proposal, right?

14 A. We haven't abandoned that the pension program entirely.
15 At that point in time we still had hopes of continuing to
16 bargain and have the company come pack and give us some
17 response.

18 Q. Well, you might have had hopes, but it's like Charlie
19 Brown hopes to kick the football that Lucy's, right, because
20 you got rejected every three years for a couple decades, you
21 testified?

22 A. I know I proposed it the last time and this time. I don't
23 know what was done before that, and that doesn't take a right
24 away of us ever trying to get the Teamster pension again.
25 It --

1 Q. I'm not saying it takes the right away from you.

2 A. -- may be proposed again three years from now.

3 Q. And you have every right to do that. I'm just saying when
4 you made this proposal, it actually would increase the cost
5 from where you were previously?

6 MR. MARSHALL: Objection, Your Honor. Was there a
7 question?

8 THE COURT: Did you believe the proposal on July 13th
9 was an increase or a decrease in the monitor proposal you had
10 made on April 22nd?

11 THE WITNESS: Decrease.

12 Q. Let's talk about some of the other issues that came up on
13 July 13th. I think you said that the company informed the
14 union they were not going to waive any of their rights, right?

15 A. Yes.

16 Q. And you testified that this was with regards to their view
17 that this was an economic strike, right?

18 A. Correct.

19 Q. So did you take that to mean that the company was saying
20 "We have the right to permanently replace employees," right?

21 A. They thought they had the right, yes, if it was an
22 economic strike.

23 Q. Sure. And actually, if the company were right and this
24 were an economic strike, they would have that right, correct?

25 A. If this ultimately is proven, yes, I'm assuming that, I

1 guess, at this point.

2 Q. I guess that determination turns on whether or not the
3 parties were at impasse, right?

4 MR. MARSHALL: Objection.

5 THE COURT: We don't need to have him give me legal
6 opinions.

7 Q. Let me -- I'm not trying to get a legal opinion from him.
8 I'm trying to get his view of how they viewed the strike. But
9 if the company were right and the parties were at impasse, then
10 it would be an economic strike and they would have that right
11 to permanently replace employees, right?

12 MR. MARSHALL: Objection, Your Honor.

13 THE COURT: Overruled.

14 A. That's my understanding.

15 Q. Okay. And the union's position with regards to that was
16 it's an unfair labor practice and you don't have the right to
17 permanently replace. The members have an automatic right to
18 reinstatement, right?

19 A. Absolutely.

20 Q. So, now, nothing has changed and the underlying
21 disagreement, I guess, that brought the parties to a strike and
22 now there is a further disagreement between the parties as to
23 is this an economic strike or is this an unfair labor practice
24 strike, correct?

25 A. That brought us to where? You said that brought us to

1 this point. I guess I'm a little confused now, because I
2 thought that's what the trial in November was to decide.

3 Q. Well, in any event, after that meeting the union took the
4 position that it was not even going to bargain unless and until
5 the company accepted the idea that it was an unfair labor
6 practice strike?

7 A. Again, as I stated, we thought we'd be at an unlawful
8 disadvantage of the company trying to get the contract that
9 they want by violating the law.

10 Q. Now, at the time that you met on July 13th, you knew that
11 the National Labor Relations Board had decided to issue a
12 Complaint?

13 A. Correct.

14 Q. In the underlying matter, right?

15 A. Correct.

16 Q. And they informed you of that on July 2nd, right? They
17 being the National Labor Relations Board.

18 A. It was right around that time, yes.

19 Q. And that was when the union made it's offer to return,
20 right?

21 A. Unconditional offer to return, yes.

22 Q. And requested bargaining as well, right?

23 A. Correct.

24 Q. And that was the first time, I think we established that
25 was the first time that they, that the union decided to request

1 bargaining, right?

2 A. It could have been, yes.

3 Q. And so, would you agree with me if I say that the union
4 felt that the issuing of the Complaint strengthened its
5 position to achieve an agreement?

6 MR. MARSHALL: I'm going to object, Your Honor. If
7 Mr. Trapp wants to ask about Mr. Webber's opinion, I think
8 that's a permissible question, but to ask about the union is
9 inappropriate.

10 THE COURT: Well, all right. Is he here speaking on
11 behalf of the local? I mean, I thought that's why you called
12 him.

13 MR. MARSHALL: I see your point, Your Honor. I
14 withdraw my objection.

15 THE COURT: Go ahead.

16 MR. TRAPP: Can I have the question read back. I
17 just lost it.

18 (The requested question was read back.)

19 THE COURT: I think the question had to do with
20 whether the union believed that the decision of the NLRB to
21 file a Complaint strengthened the union's bargaining position
22 vis-a-vie the company.

23 A. That is definitely a reason why we offered an
24 unconditional return to work.

25 Q. And you requested bargaining for the first time in over

1 two months as well, right?

2 A. Correct.

3 Q. And that's because you felt like you had more leverage to
4 extract a deal, correct?

5 A. We thought that it's going to be fleshed out. The Board
6 has gone to Complaint and that the process is going start.

7 Q. And then you said on direct that at the end of that
8 meeting you were at a loss as how to proceed, right?

9 A. We were trying to figure out how we could or would
10 proceed, yes.

11 Q. And, in fact, the union walked out of the July 13th
12 meeting, correct?

13 A. I wouldn't say we walked out. We had the Mediator, Gary
14 Eder. He went down and talked to the company, probably on two
15 occasions, and delivered that message, and told the company
16 that we would be getting back with them, which we did.

17 Q. And that was GC 59, right? That was Mr. Ratliff's letter
18 that you're referring to?

19 A. I believe that's the one.

20 Q. Let me see if I can find that, Doug. Well, I don't have
21 it in front of me, but in any event, in that letter you, you
22 being the union, requested that -- here we go. Thank you, Mr.
23 Rosenberg. This is where the union took its position that the
24 company had to undo the unlawful conduct, from the union's
25 standpoint, in order for the union to bargain, right?

1 A. Correct.

2 Q. And then there was a response, which is Respondent's 32.
3 Put that one down. This was the response that you got, from
4 that the union got from Mr. Crupin, right?

5 A. It appears to be, yes.

6 Q. Let's turn over to page two of that document. Wait.
7 Sorry. It's on page one. You testified on direct about you
8 disagreed with the decision being in the union's hands, right?

9 A. Correct.

10 Q. Well, just to be clear, even though there was a
11 disagreement about what kind of strike this would ultimately
12 be, the union could have taken the company's offer and
13 bargained as if it were an economic strike and returned people
14 to work. That was what the company had offered that day,
15 right?

16 A. We weren't going -- At this point in time we weren't going
17 to let the company which has gone, NRB has gone to Complaint
18 against the company for violating the Act and then sit down and
19 bargain at a disadvantage where the company, in our opinion,
20 violated the law and then have to sit down and bargain with
21 them at a disadvantage.

22 Q. Right. I get that. I'm not arguing with that position.
23 But I'm just saying, that was the union's position, right?

24 A. As I just stated it, yes.

25 Q. And the union was not going to bargain unless it was

1 viewed as an unfair labor practice strike and everybody came
2 back and the rescission took place, right?

3 A. At this point in time the company has been issued
4 Complaint against. We felt secure in believing that they
5 violated, the company violated the law, and we would be at a
6 disadvantage to sit down at that time to negotiate a fair
7 agreement.

8 Q. And so you weren't going to do that without those
9 conditions being met, correct?

10 A. It was a way to get us back to the table, yes.

11 Q. Okay. That's a yes to that question?

12 A. At that time, yes, absolutely.

13 Q. Okay. Let's turn over to page 2 of Respondent's 32. Now,
14 you were questioned about this on direct, I think, and I
15 believe you said something along the lines of that you didn't
16 know what the company's best offer was. Do you remember that?

17 A. Correct. Something similar to that.

18 Q. Now, I mean, you know what the company's best offer was,
19 right?

20 A. Well, it got a little muddy after April 1st.

21 Q. How did it get muddied?

22 A. Well, then, you know the meeting I'm talking about, where
23 the company themselves wanted to explore a two tier top right.

24 Q. Yeah. On April 1st the company offered the contract rate
25 but that was rejected by the union, correct?

1 A. It was countered by the union and then the company was
2 going to crunch numbers and get back with us.

3 Q. I have to refer to the transcript for who testified to it,
4 but either you or Mr. Gibson or Mr. Ratliff testified that the
5 counter meant that that was rejected, before the ALJ.

6 A. Initially.

7 MR. MARSHALL: Objection. Is Mr. Trapp going to
8 testify?

9 THE COURT: Where are we going now?

10 MR. TRAPP: I'm just trying to get out that --

11 THE COURT: Why don't you ask him a question and he
12 will either answer it the way you think they did at the
13 hearing, or he won't and if he doesn't, you can pull out the
14 transcript.

15 Q. Do you remember that testimony, either from you or Mr.
16 Ratliff or Mr. Gibson at the hearing, that the contract rate
17 had been rejected?

18 A. Are you talking about the April 1st meeting?

19 Q. Yeah.

20 A. The contract rate was met with a counter from the union.

21 Q. Of the five year wage progression, right?

22 A. Correct.

23 Q. And it never came up again, right?

24 A. What never came up again?

25 Q. The idea of a contract rate proposal?

1 A. Not to my recollection.

2 Q. Okay. Now, with the understanding that the best offer was
3 the, was what had been conveyed on February 18th, was that
4 offer acceptable to the union?

5 A. On February 18th, no. That's why we tried to continue
6 bargaining.

7 Q. And subsequently has it ever become acceptable to the
8 union?

9 A. As it was on February 18th?

10 Q. Yeah.

11 A. No.

12 Q. So, to be clear, Doug. after the July meeting between the
13 parties, the union's position has been that it's not willing to
14 bargain unless and until the company accepts the proposition
15 that the strike was an unfair labor practice strike?

16 A. I think that's how we can bargain fairly with the company.

17 Q. Okay. So that's a yes, right?

18 A. I believe that's how we can bargain, move forward fairly.

19 Q. Yes? I'm not trying to trap you here. Is it yes or no?

20 A. That's how we can move forward, yes.

21 Q. Okay. Now, let me see if I have these here. General
22 Counsel 47. Let me put that up. Do you see that document, Mr.
23 Webber?

24 A. Yes.

25 Q. And if we look at the second page, this was a document

1 that you prepared to send to Daycon, correct?

2 A. Yes.

3 Q. And it looks like it's dated August 25, 2010?

4 A. Correct.

5 Q. And this was, I guess we'll refer to it as an information
6 request?

7 A. Yes.

8 Q. And you requested information from Ms. Kendall about the
9 bargaining unit?

10 A. Correct.

11 Q. This was approximately four months after the strike began,
12 right?

13 A. Correct.

14 Q. And let me put down General Counsel 48. Do you see that
15 document?

16 A. Yes.

17 Q. And there are two pages to this one as well. And would
18 you agree with me this is the response that you received to GC
19 47?

20 A. Yes.

21 Q. And this was a response to your information request?

22 A. Yes.

23 Q. Okay. Now --

24 MR. TRAPP: Judge, I think this document was attached
25 to our response but it was not introduced in front of the ALJ

1 and doesn't have a number on it.

2 THE COURT: Okay. Well, then, it should be
3 Respondent exhibit.

4 MR. TRAPP: So, we'll call this Respondent's Exhibit
5 1, I guess. Are we numbering it that way, 40? I'd rather just
6 call it 1.

7 THE COURT: Okay. Respondent's Hearing Exhibit 1
8 should do it.

9 MR. TRAPP: Should I --

10 THE COURT: Show it to Mr. Marshall and see if there
11 is a problem with it. If you have to lay a foundation, you'll
12 go ahead and do it.

13 MR. TRAPP: Should I give this to Mr. Webber or put
14 on it the screen? I'm sorry, Judge.

15 THE COURT: Is it agreed to or is there a problem
16 with it? Do you have to lay a foundation or not? I don't
17 know. Do you have an objection to it coming in?

18 MR. MARSHALL: Mr. Webber, have you seen it?

19 THE WITNESS: I haven't seen it.

20 THE COURT: He doesn't. He hasn't seen it now.

21 MR. MARSHALL: Oh. I mean, I have no, you know,
22 particular objection to it --

23 THE COURT: Okay. He --

24 MR. MARSHALL: -- but I don't know what it's being
25 offered for.

1 THE COURT: Well, I'm probably more at a loss than
2 anybody.

3 MR. TRAPP: I'll just show it to him.

4 THE COURT: I haven't seen it either. Show it to the
5 witness, see if he's seen it before.

6 A. Yes, I've seen it.

7 Q. And that's a letter from you to Ms. Kendall?

8 A. Yes.

9 Q. Responding to an issue that was raised by an employee?

10 A. Responding to an issue that was raised by her.

11 Q. About one of the employees. I'm sorry.

12 A. Correct.

13 MR. TRAPP: Actually, I should probably attach these
14 as just one exhibit.

15 Q. I'm going to give you two more pages, Doug. Do you see
16 the other two pages I just handed you, Doug?

17 A. Yes.

18 Q. We'll attach those together and still refer to them as
19 Respondent's 1. But the first page you have there is your
20 response on October 6th to Ms. Kendall's letter, which would be
21 page 2 of that same exhibit, right?

22 A. Okay.

23 Q. And Ms. Kendall sent you a letter on October 1st regarding
24 an issue raised by an employee, right?

25 A. Correct.

1 Q. And that employee's note is page, what would be 3 of that
2 exhibit, right?

3 A. I've got the employee note. I'm not sure how you're
4 numbering them, but if you want to call it 3, that's okay.

5 MR. TRAPP: Okay. Well, then, we will call that a 3
6 page Respondent's Exhibit one and move for it's admission.

7 THE COURT: Okay. It's received.

8 MR. TRAPP: Judge, might I have just one minute.

9 THE COURT: Um hum.

10 MR. TRAPP: Okay, Judge. I think that's it for me.
11 Thank you, Mr. Webber.

12 THE COURT: Any redirect?

13 MR. MARSHALL: Your Honor, may I ask for a five
14 minute recess?

15 THE COURT: Okay. We'll take probably a little
16 longer than that.

17 MR. MARSHALL: Thank you, Your Honor.

18 THE COURT: We'll take a recess of about ten minutes.
19 Thanks.

20 (A brief recess was taken.)

21 THE COURT: Please be seated. Mr. Marshall.

22 REDIRECT EXAMINATION

23 BY MR. MARSHALL:

24 Q. Mr. Webber, I'm going to ask you a few questions, more for
25 my purposes of clarifying some confusion that I had from your

1 testimony on cross, at least initially.

2 I'm going to ask you about some specific employees.

3 Diarra Mackall.

4 A. Yes.

5 Q. Are you aware of whether Mr. Mackall has secured temporary
6 employment elsewhere?

7 A. He has.

8 Q. Daniel Wiggins. Are you aware of whether he secured
9 temporary employment elsewhere?

10 A. He has.

11 Q. Justin White. Are you aware of whether he secured
12 temporary employment elsewhere?

13 A. He has.

14 Q. Greg Mingle.

15 A. Yes.

16 Q. He has secured temporary employment elsewhere?

17 A. Yes.

18 Q. And David Limrick?

19 A. Yes.

20 Q. Are there any other employees that you're aware of at this
21 moment that have secured temporary employment elsewhere?

22 A. Not that I'm aware of.

23 Q. Okay. Now, Mr. Webber, Mr. Trapp asked you some
24 questions, and I think he referred to it as his system, about
25 support for the union.

1 I want to give you a chance to explain. What do you
2 view as support for the union?

3 A. Believe in the cause of what the union is doing. Believe
4 that the union is willing to fight on their behalf. Believe,
5 too, they believe and expect the union to negotiate the best
6 that they can and bring back a contract that they can ratify.

7 Q. And what about on the picket line, what do you view as
8 support for the union on the picket line?

9 A. To participate, be active. Let the public know that there
10 is a struggle, a strike going on with Daycon. More so for the
11 public to be the aware of it than the company. The company is
12 well aware of it, we understand that, but to generate support
13 from the public.

14 Q. Okay. I'm going to ask you, shift gears, get some of
15 these bullet points. Mr. Trapp asked you some specific
16 question about an employee named Adalberto Mendez. Do you have
17 Exhibit 82 in front of you?

18 A. Yes.

19 Q. Could you turn to the week of December 13th?

20 A. Okay.

21 Q. Let me see if I can operate this system. Now, Mr. Trapp
22 had asked you some questions regarding Mr. Mendez's
23 participation, or at least indication on the strike pay
24 eligibility form, regarding the following week, December 20th.
25 This is the prior week. Is there any indication that Alberto

1 Mendez signed this form on the week of December --

2 A. No.

3 Q. Thirteen?

4 A. No.

5 Q. Now, I believe Mr. Trapp also asked you some questions
6 about Mr. Mendez's indication on the form about his
7 participation the week of, prior to the New Year's Eve, the
8 week of December 27th, and that Mr. Mendez had signed the form
9 that week?

10 THE COURT: What week?

11 MR. MARSHALL: December 27th, Your Honor, the week
12 ending in New Year's Eve.

13 THE COURT: Okay.

14 Q. I'd like to draw your attention, Mr. Webber, to the next
15 week's worth of strike pay eligibility forms, and Mr. Mendez's
16 indication that he participated there.

17 A. I'm sorry. Which week are we talking about?

18 Q. The week -- I'm sorry. The week of January 10th?

19 A. Okay.

20 Q. Was there any indication that Mr. Mendez participated
21 during that week?

22 A. No.

23 Q. How you would characterize Mr. Mendez's indication of
24 participating in the prior two weeks?

25 A. The prior two weeks from January 10th?

1 Q. The prior two weeks from January 10th.

2 A. Well, didn't we see that he did participate one week and
3 not the other, or am I confused?

4 Q. I'll move on. You said when you were testifying, and I
5 think that this was fairly late on, this was after Mr. Trapp
6 had been asking you questions about a mixed work force and you
7 said "We feel we're at a disadvantage." Please explain what
8 you meant by that.

9 A. I always try to keep the unit together as a whole. I've
10 been able to deliver better contracts when the unit is a whole
11 and have common goals and common issues.

12 I believe that the unit is divided now, not just in
13 two but in threes, and to get back to the bargaining at some
14 point in time, it's like I'm going to have three segments to
15 try and find common interests and common goals, to try to
16 deliver a CBA.

17 Q. Do you think that impacts your ability as the business
18 agent for this unit?

19 A. Yes, it has.

20 Q. Please describe it.

21 A. I don't believe the three groups are going to come back
22 together again and operate as a whole.

23 Q. Now, Mr. Webber, Mr. Trapp also asked you about, I think
24 he phrased it as three following meetings to the meetings that
25 took place on February 18th, March 17th and then in April.

1 And referencing the point that the only issue that
2 was discussed was wage progression. Mr. Webber, are you
3 familiar with the phrase "economic distress?"

4 A. Yes.

5 Q. What is economic distress?

6 A. It's a clause that was part of their best offer.

7 Q. Was that clause part of their offer on February 18th?

8 A. Yes.

9 Q. Was that clause part of what you understood their offer to
10 be on March 17th?

11 A. Yes.

12 Q. Was that clause part of what you understood to be their
13 offer on April 22nd?

14 A. Yes.

15 Q. You were also asked about the union's proposal from
16 July 13th, specifically in regards to pension. You indicated
17 that this was a decrease from the prior proposal from
18 April 22nd?

19 A. Yes.

20 Q. Could you explain why the union proposed what it did
21 regarding pension on July 13th?

22 A. Normally through the course of negotiations, we keep
23 moving and if we move, hopefully the company moves and
24 hopefully at the end of the day we get an agreement.

25 The pension was on the table and to seek that

1 commonality, or common ground, or whatever, we modified our
2 proposal by pushing the pension off until the last two years
3 of, or last two years of an agreement.

4 Q. Did you view that as lessening the cost of the union's
5 proposal to the employer financially?

6 A. Yes.

7 Q. Do you know how much that would have reduced the cost to
8 the employer?

9 A. Approximately the first three years, if they would have
10 participated from year one, it would have been over, maybe a
11 hundred thousand dollars a year. We pushed that off until the
12 fourth year of the agreement, which under a five year agreement
13 it may have been \$200,000 at the end of a five year agreement
14 versus \$300,000 for a three year agreement.

15 Q. And this was your initial offer on July 13th?

16 A. Correct.

17 Q. Did the company respond at all?

18 A. They came back and did not counter that, no.

19 Q. Did their proposal change at all?

20 A. No, no change.

21 Q. Now, at this time, obviously, people were not working?

22 A. Correct.

23 Q. What I'm going to like to do is I'm going to refer you
24 back to, and I will show it to you in a second, Respondent's
25 Exhibit 2, and that's the letter from J. Crupin to Thomas

1 Ratliff on July 27, 2010. Can you see okay?

2 A. Yes.

3 Q. Again, I'm going to refer you to the last sentence "You
4 will see our best offer is truly acceptable and we can move
5 forward." Were employees working at this time?

6 A. No.

7 Q. At this time, was your understanding that the employer's
8 position was that this was an economic strike, and that these
9 individual had been permanently replaced?

10 A. Yes.

11 Q. And the union's position at this time was that these were
12 unfair labor practice strikers who were entitled to go back to
13 their jobs on July 6th?

14 A. Correct.

15 Q. Was it your opinion at this time that there was more
16 involved in the negotiations than just what had been taking
17 place back in February, March and April?

18 A. Yes.

19 Q. What was the most significant issue at this point in time?

20 A. Getting workers put back to work.

21 Q. Mr. Webber, you were asked some questions about how you
22 felt about the union's leverage on July 2nd. How do you feel
23 about the union's leverage now?

24 A. It's diminishing.

25 Q. Why?

1 A. Daycon has made it publicly known that they are willing to
2 litigate forever. I know that's probably their right. We
3 believe that the testimony and transcript and trial of November
4 is going to prove that the union was right.

5 We don't know when that decision is going to come
6 down, but when it does come down, I could bet my last dollar
7 that Daycon is going to appeal it, which is their right, which
8 is going to prolong this.

9 That's one of the reasons why we're here today.

10 Q. Do you have any idea, as you stand here today, when these
11 employees are going to go back to their jobs?

12 A. No idea.

13 Q. When were those employees entitled to go back to their
14 jobs?

15 A. July 6th.

16 MR. MARSHALL: Thank you, Mr. Webber. I don't have
17 any further questions.

18 THE COURT: Any questions?

19 MR. TRAPP: Just a couple, Judge.

20 THE COURT: Um hum.

21 RECROSS EXAMINATION

22 BY MR. TRAPP:

23 Q. Mr. Webber, with regards to the employees who have secured
24 temporary employment elsewhere, that was your characterization,
25 right, temporary employment?

1 A. Correct.

2 Q. Why you do characterize it as temporary?

3 A. Anybody that left at that time wanted to know what
4 they're, if they're giving up any rights to come back once that
5 is resolved.

6 Q. Okay. So those people that have secured temporary
7 employment, they have the right to come back if they get
8 recalled, right?

9 A. Yes.

10 Q. And that's why you characterize it as temporary, because
11 you expect them to return to Daycon if they get an offer,
12 right?

13 A. Yes.

14 Q. You testified about supporting the union means believing
15 in the cause -- I might not have written this done exactly
16 right, so just tell me where I stray -- believing in the cause
17 that the union stands for, believing that the union will fight,
18 believing the union will negotiate the best deal it can. And
19 then as far as picketing, generating support and letting the
20 public now about the message, right?

21 A. Basically.

22 Q. So, the first three of those four points in supporting the
23 union is believing, right?

24 A. I would believe that, yes.

25 Q. And so the employees would be doing three quarters of what

1 you characterize as supporting the union simply by believing in
2 what the union believes in, in believing that the union will
3 faith for them and in believing that the union will negotiate
4 the best deal it can, right?

5 A. I think that's what they expect their union to do for
6 them.

7 Q. And that's what you have been doing, right?

8 A. I've been doing it, yes.

9 Q. And they have every reason to support you based on that
10 criteria, don't they? I mean, surely everybody knows that
11 you're fighting for them?

12 A. Each one of them is an individual and they'll characterize
13 it however they see faith. Hopefully they come to that
14 conclusion, but I'm beginning to wonder.

15 Q. Now, as far as Adalberto Mendez not signing the sheets,
16 that doesn't mean he wasn't there, right?

17 A. I know that he hasn't participated as the levels he did at
18 the onset. It does not mean that he wasn't there based on the
19 example I gave you earlier that the sign-in sheet may not all
20 be there.

21 Q. In fact, there is some portion there in November, I think,
22 where there is an entire week of a blank sign-in sheet that
23 nobody signed, right?

24 A. That might have been the work that the NLRB trial was
25 going on and I didn't get one out there.

1 Q. That's probably right. There's a lot of blank spots
2 coming out of that one, I think. Adalberto, though, I thought
3 we specifically talked about when I was asking you questions
4 before, and we talked about January 10th and that's why we put
5 that dot next to his name, is that we would set him aside to
6 come back to later to find out if there was any reason to
7 question his support for the union, right?

8 A. Okay.

9 Q. And we put a dot next to his name, right?

10 A. You did, yes.

11 Q. I did. I'm sorry. And then we talked about him and I
12 asked you "Do you have any reason to question his support," and
13 I thought you said that you really didn't?

14 A. He's not there. I don't know what the reason is that he
15 has not been there, so I don't know.

16 Q. And he is receiving the strike benefits still, I think you
17 said too, right?

18 A. I believe he may have been cut off at one time for
19 nonpayment of dues.

20 Q. And he's receiving them currently though, right?

21 A. To the best of my knowledge, yes.

22 Q. Okay. And there's also ambulatory picketing going on at
23 various times, right?

24 A. At the onset.

25 Q. And that's where people follow Daycon trucks out to the

1 customers and then picket at the customers' place of business,
2 correct?

3 A. Correct.

4 Q. Do those people sign in?

5 A. They may have. That was early on, and I usually would
6 recruit whoever to do the ambulatory picketing from the strike
7 line.

8 Q. Didn't you tell the, you know the newspapers at the
9 University of Maryland, the student newspaper, The Diamondback?

10 A. Heard of it.

11 Q. Didn't you get interviewed by them in October or November
12 for an article they were doing about the Daycon strike?

13 A. I may have.

14 Q. And do you remember the Diamondback that you guys were
15 doing ambulatory picketing at that time?

16 A. I may have.

17 Q. And you were doing ambulatory picketing, right?

18 A. We had done some, yes.

19 Q. Okay. And so it's possible that some people were out
20 doing ambulatory picketing and didn't sign in for those days?

21 A. They wouldn't do ambulatory picketing without me being
22 aware of it.

23 Q. But they could do it with you being aware of it and still
24 not sign the sheet, right?

25 A. It's possible. But, like I said, early on when we had the

1 highest level of participation. I would usually get the people
2 from the picket line. So if they were there, I would assume
3 that they signed in early on. The ambulatory picketing is not
4 at the level right now where it was at the beginning.

5 Q. Now, in January, the number that comes to mind when we
6 went through the picketing sign-in sheets was I think
7 January 14th, there was like 14 employees, right?

8 A. Correct.

9 Q. And if you add the 11 employees that have returned to
10 work, that gets us up to 25 employees, right?

11 A. Thereabouts, yes.

12 Q. And if you add the five or six employees that have secured
13 temporary employment but informed you that they wished to come
14 back to Daycon if and when they get a recall offer, we're up to
15 30, 31, right?

16 A. You're losing me because I don't know which week you're
17 talking about and how many people were there on any given day.
18 You know, are we talking averages or what are we doing?

19 Q. We're talking about --

20 A. Every day is different.

21 Q. -- January 14th, I think that we looked at the exhibit and
22 determined that there were 14 employees that signed the sheet
23 that day?

24 A. Okay.

25 Q. If we add the 11 people that have been recalled, that's

1 25, right?

2 A. Correct.

3 Q. And then if we add the five or six people who have secured
4 temporary employment but indicated to you that they wished to
5 return to Daycon if and when they get a recall offer, that gets
6 us up over 30 employees, right?

7 A. On that particular day.

8 Q. Okay. Now, I want to touch just briefly on the pension
9 again, and you characterized it as this would save Daycon a
10 hundred thousand dollars and, but you knew from the beginning
11 Daycon was never going to agree to get in the pension, didn't
12 you?

13 A. I didn't know that.

14 Q. Well, they rejected it, right?

15 A. They rejected a three your proposal at the beginning.

16 Q. I mean, I guess you could propose at the beginning of the
17 negotiations a \$20 contribution per hour, right?

18 A. Could have proposed anything.

19 Q. And then if you withdraw it later on, would you say that
20 you're saving the company a million dollars now?

21 A. I know where you're going with that. But the bottom line
22 is is anything you propose and reduce it, it's not a savings.
23 I understand that. But it is a reduction of what the cost
24 would be for the company over a specified period of time.

25 Q. Okay. That's fair enough, Doug. Now, at the even of the

1 day here somebody's going to be right and somebody's going to
2 be wrong, and if the union is right in its positions, then the
3 employees will be reinstated and they'll get back pay, correct?

4 A. That's my understanding.

5 Q. And that's how the National Labor Relations Board normally
6 works, right?

7 A. Yes.

8 Q. And I guess there are, I count 18 people here in the
9 courtroom that I would say are with Daycon and here to support
10 the union today. Does that look like a fair number?

11 A. I would only --

12 MR. MARSHALL: I'm going to object to that, Your
13 Honor.

14 THE COURT: Well, okay. He can say if he recognizes
15 who these folks are and what they might be doing here.

16 MR. MARSHALL: Absolutely, Your Honor.

17 THE COURT: If he can't, then that's what the
18 question is?

19 MR. MARSHALL: I would just object to the support the
20 union aspect. Mr. Webber doesn't --

21 THE COURT: Break it up. See if they recognize them
22 as people that he knows from working at Daycon.

23 Q. Is there anyone in the courtroom that you don't recognize?

24 A. No. I know them all.

25 Q. And are the audience members back here Daycon strikers?

1 A. Yes.

2 Q. And are there about 18 of them?

3 A. Yes.

4 Q. And a couple of them have testified here today?

5 A. Yes.

6 Q. And left?

7 A. One has left.

8 Q. Okay.

9 MR. TRAPP: All right. That's all I have. Thanks,
10 Judge.

11 THE COURT: Any final questions for Mr. Webber?

12 MR. MARSHALL: I have one final question, Your Honor.

13 THE COURT: Okay.

14 REDIRECT EXAMINATION

15 BY MR. MARSHALL:

16 Q. Mr. Webber, the people sitting in the audience, if this
17 Court orders the Preliminary Injunction that we've sought, do
18 these people go back to their jobs?

19 A. Yes.

20 Q. Is that the same as support for the union?

21 A. No.

22 MR. MARSHALL: Thank you.

23 THE COURT: Thank you, Mr. Webber. That will
24 complete your testimony and you can return to the audience
25 area.

1 THE COURT: Mr. Marshall, any other witnesses today?

2 MR. MARSHALL: No, Your Honor.

3 THE COURT: Mr. Trap.

4 MR. TRAPP: Judge, we have one. Should I put him up
5 right now?

6 THE COURT: If you're ready.

7 MR. TRAPP: Okay. We will call John Poole.

8 (The oath was administered.)

9 THE CLERK: Please be seated. Please speak loudly
10 and clearly into the microphone. State your name for record
11 and spell your last name.

12 THE WITNESS: My name is John C. Poole, P O O L E,
13 Jr.

14 DIRECT EXAMINATION

15 BY MR. TRAPP:

16 Q. John, could you tell the Court what position you hold?

17 A. I'm the President of Daycon Products Company.

18 Q. And how long have you held that position?

19 A. For approximately ten years.

20 Q. And what are your duties and responsibilities?

21 A. I'm responsible for the day to day operating decisions of
22 the company, and for the achievement of the plan.

23 Q. And does, what sort of specific things does that involve?

24 A. Annual plans, strategic objectives for the company, risk
25 management. All the responsibilities that we have to protect

1 shareholder interest, as well as to accomplish the goals.

2 Q. Okay. Could you inform the Court a little about your
3 background, your education, that sort of thing.

4 A. I went to the University of Maryland, got a degree in
5 economics, and also I got a degree in accounting. Went to work
6 as an accountant in Bethesda. Got my CPA.

7 Daycon was a client of mine. I went over there on an
8 assignment and never came back. So I became a controller as my
9 first position at Daycon.

10 Q. And you said you have a CPA?

11 A. Yes, sir.

12 Q. What's CPA, Certified Professional Accountant?

13 A. Certified Public Accountant.

14 Q. Certified Public Accountant?

15 A. Yes, sir.

16 Q. What is it?

17 A. Certified Public Accountant.

18 Q. Okay. Have you had a chance to consider what the impact
19 would be on Daycon if the Court were the order the relief
20 requested by the National Labor Relations Board?

21 A. Yes, sir. I think that the impact of a 10(j) ruling
22 against the company would be three fold. I think there's an
23 economic impact to the company. I think that there's a
24 reputation impact to the company, and I think there is an
25 impact on the operations.

1 MR. TRAPP: Let me mark an exhibit here. Are we on
2 number two or three?

3 THE CLERK: Two I believe.

4 MR. TRAPP: Would you like one of these, Judge? I
5 have enough copies.

6 THE COURT: Okay. Whatever they -- if they're coming
7 in.

8 Q. Do you see Respondent's Exhibit 2, John?

9 A. Yes, sir.

10 Q. Could you tell the Court what this exhibit is?

11 A. I asked HR to provide me a list of the people that we
12 can't account for in this labor dispute, and I took their wages
13 that were prior to the expiration of the contract, extended
14 those wages for those individuals for a year and calculated
15 that at a base wage rate, \$897,000 would be the cost for one
16 year of wages for these 25 individuals. I also --

17 Q. Well, why did you select one year?

18 A. Earlier Sean Marshall was asked in this Court how long he
19 thought it would take to resolve that dispute, and he said he
20 really couldn't tell, but that it could take up to a year, and
21 I thought that was as good a number as any.

22 Q. And tell me again, how did you get the pay rate?

23 A. This was the contract rates prior to the expiration of the
24 contract.

25 Q. So this is what these particular employees were making?

1 A. Yes, sir.

2 Q. And this would have been, I guess this is pre strike, I
3 guess?

4 A. I believe it's March 17th, so it would be before there was
5 any adjustment to wages.

6 Q. Okay. And, so, explain to me down in this little black
7 box that's there, looks like totals. Tell me a little bit
8 about that.

9 A. Okay. The first line is the base wages for one year. The
10 second line is the employer's share of FICA tax for the base
11 wages, covering the base wages. The third line is the cost of
12 providing health insurance at \$3.08 an hour for 25 individuals,
13 and I do my calculation based on 2,080 per year against the
14 cost of the health trust.

15 The cost of Workmen's Compensation is calculated by
16 our current policy that renewed on June 1st, and then I've come
17 up with a sum of what it would cost for one year, for one half
18 a year, or for one month.

19 Q. So this chart displays what would be the economic impact
20 of reinstatement on Daycon?

21 A. This would be the economic impact of reinstatement and
22 retention of current employees.

23 MR. TRAPP: Okay. Judge, I'll move for the admission
24 of Respondent's Exhibit 2 at this time.

25 THE COURT: No objection?

1 MR. MARSHALL: I don't have any objection, Your
2 Honor.

3 THE COURT: It's received.

4 Q. Now, Mr. Poole, you said that this would show, that this
5 would be, I guess this would be like on top of where you are
6 right now, right?

7 A. Correct.

8 Q. Where the company is. So do you have current employees?

9 A. Yes, sir.

10 Q. And are they sufficient for your needs?

11 A. Currently there are no vacancies in the collective
12 bargaining unit areas.

13 Q. Are you, has the company been recalling employees as
14 necessary?

15 A. As needed, we have recalled people.

16 Q. So, when -- You were here in the courtroom on
17 January 20th, correct?

18 A. Yes, sir.

19 Q. Do you remember Mr. Marshall stating that the company
20 could make an entrepreneurial decision --

21 A. Yes, I do.

22 Q. -- about whether to retain the replacement workers or not?

23 A. Yes, sir.

24 Q. What do you remember about that?

25 A. He felt that it was a choice for the company to make and

1 that if it bore that economic cost, it would be a decision that
2 the company had decided to bear, basically.

3 Q. Well, is it a choice that the company can make?

4 A. I look at it as a very -- I can choose also not to have
5 commercial insurance, but I don't know if it's prudent and I
6 think in this particular case making the choice not to retain
7 the workers is imprudent for two reasons.

8 I think one is I've hired people as permanent
9 replacements and they're working. And the other reason is is
10 that if 10(j) relief is granted and the people are let go, the
11 union has the ability, since we're still at odds on the issues,
12 to actually have another work interruption, which would be
13 untenable to the company. So I think the prudent thing in risk
14 manage for our company is to retain the workers while we're
15 still in this dispute.

16 Q. You could, you acknowledge, though, that you could choose
17 to replace the replacements, right?

18 A. Correct.

19 Q. And under that scenario, would these numbers be the same?

20 A. If I, no. Well, these numbers represent more than my
21 current cost and it would represent an additional coast to the
22 company.

23 Q. I mean, I guess what I'm driving at, something would come
24 off of this if you chose to, or at least there would be some
25 savings to the company if you replaced those replacements?

1 A. Correct.

2 Q. They said that there might be some harm to Daycon's
3 reputation?

4 A. Yeah. I'm concerned about the reputation of our company
5 on several fronts. I've gotten letters from Steny Hoyer,
6 letters from a County Executive. A congressman has walked our
7 line. Newspapers call me all the time.

8 I've gotten letters from presidents of marquise
9 accounts from our customers, all concerned about our labor
10 dispute and I'm concerned about the reputation of the company.
11 It seems nowadays the simple accusation of wrongdoing is worse
12 than if you have a conviction, and I'm concerned about what
13 they might do.

14 Article recently was published in the Diamondback
15 where James Sterling, who is the contract officer from the
16 University of Maryland that manages our account, said that our
17 relationship with the University of Maryland has been reviewed
18 by the University and found that we were not in violation, and
19 that's a five years contract and if we were to ever lose a five
20 year contract over an issue like this and ultimately be
21 adjudicated in favor of the company, I don't know who would
22 restore that business to us.

23 Q. So you're concerned about what the impact might be on the
24 customers?

25 A. Correct.

1 Q. Or at least on their view of Daycon?

2 A. Of the company.

3 Q. Let me hand you Respondent's 3 and 4, John. Do you see
4 Respondent's Exhibit 3 and 4?

5 A. Yes.

6 Q. Can you describe for the Court what those documents are?

7 A. These are both letters from some of our best accounts to
8 us. In the case of University of Maryland from President Lowe
9 of the University, and from Georgetown, the case of a Senior
10 Vice President Billups, expressing their concern over our labor
11 dispute and encouraging us to move forward in some way.

12 MR. TRAPP: Your Honor, at this time I move for the
13 admission of Respondent's Exhibit 3 and Respondent's Exhibit 4.

14 MR. MARSHALL: No objection, Your Honor.

15 THE COURT: No objection. They're received.

16 MR. TRAPP: I think that might be all I have for Mr.
17 Poole, Judge.

18 THE COURT: Mr. Marshall.

19 MR. MARSHALL: If I could have a moment, Your Honor.

20 THE COURT: Okay.

21 CROSS EXAMINATION

22 BY MR. MARSHALL:

23 Q. How are you doing, Mr. Poole?

24 A. Good.

25 Q. Could you describe what Daycon's business is?

1 A. Our business is the sale of cleaning and maintenance
2 supplies to the general population in this market area. We
3 sell to schools, universities, commercial office buildings,
4 contract cleaners, multi-family housing clients and a number of
5 other commercial clients.

6 Q. Do you produce the cleaning and maintenance equipment?

7 A. We don't produce the equipment. We do produce some
8 chemicals.

9 Q. But you store the equipment?

10 A. We buy from the manufacturers and we redistribute their
11 products.

12 Q. There's a warehouse for chemicals and equipment?

13 A. Yes, sir.

14 Q. You deliver products, both chemicals and equipment, to
15 customers, correct?

16 A. Yes.

17 Q. Those deliveries are made in trucks?

18 A. Deliveries from?

19 Q. The deliveries of products and equipment. Those
20 deliveries are made in trucks, correct?

21 A. Yes, sir. Some customers pick up but the majority is
22 delivered.

23 Q. Okay. You testified a moment ago that you feel it
24 wouldn't be prudent to replace the replacements, so to speak,
25 with the striking employees?

1 A. Yes, sir.

2 Q. Are you planning on producing twice as much chemicals?

3 A. I can't.

4 Q. You're not planning on buying twice as much equipment, are
5 you?

6 A. No. I buy to the needs of our customers.

7 Q. You're not planning on doubling the size of your
8 warehouse, are you?

9 A. Not possible.

10 Q. You're not planning on doubling your customer base, are
11 you?

12 A. Would like to do that.

13 Q. I understand. (Laughter)

14 A. That's in our five year plan. It's not over the next
15 year.

16 Q. But in terms of your annual plans and the strategic
17 objectives in your role as President --

18 A. That would take about five years on a good day.

19 Q. -- you do not foresee your customer base doubling?

20 A. In the immediate future, no.

21 Q. Okay. You have no plans to double the number of delivery
22 trucks, correct?

23 A. No. Only to the needs of our business.

24 Q. Okay. You mentioned that you could choose to replace the
25 replacement workers with the strike employees, correct?

1 A. Correct.

2 Q. And you are aware that ultimately if the National Labor
3 Relations Board succeeds on the merits of its Complaint against
4 you, you would be required to reinstate these workers, correct?

5 A. That's correct.

6 Q. Now, you also mentioned that you calculated the costs, the
7 annualized costs I think you mentioned, for the individuals who
8 are replacing these individuals on Respondent Exhibit 2,
9 correct?

10 A. Correct.

11 Q. And that that cost is less than what's here, correct?

12 A. The workers that are paid under the current contract will
13 make less money than the most senior people that would be
14 replacing them, so this would be an additional cost.

15 Q. Okay. So you save money?

16 A. I would -- If I replaced them with these worker it would
17 cost money.

18 Q. Your labor costs since the strike have been less then they
19 would have been, correct?

20 A. Correct. To the extent that half the work force has been
21 hired at new hire rates, correct.

22 Q. Now, if -- Now, prior to the strike you did have a
23 management rights clause in your collective bargaining
24 agreement, correct?

25 A. Correct.

1 Q. And that give you the right to discipline workers for a
2 number of reasons, correct?

3 A. Correct.

4 Q. For lack of a better phrase, shoddy work performance would
5 be a legitimate ground for disciplining a worker, correct?

6 A. It would be grounds for progressive discipline.

7 Q. Okay. If any of these individuals were reinstated, you
8 would still have the ability to discipline them for, for lack
9 of a better phrase, shoddy work performance, correct?

10 A. As provided under the contract, yes.

11 Q. The contract also provided that you're required to give
12 the union notice of any discipline issued to an employee,
13 correct?

14 A. I believe so.

15 Q. To the best of your knowledge, has there been any
16 notification to the union of disciplines for any of the
17 employees who have come back to work?

18 A. I'm not aware of any, but that would not be done by the
19 President.

20 MR. TRAPP: Judge, I'm going to object. That's
21 beyond the bounds of direct examination.

22 THE COURT: I'm not sure what the relevance of that
23 is.

24 MR. MARSHALL: Well, Your Honor, Mr. Poole has said
25 that he feels it wouldn't be prudent to bring the striking

1 employees back.

2 THE COURT: Because until they solve the CBA ongoing
3 problem, there could be another strike.

4 MR. MARSHALL: Yes, that is --

5 THE COURT: That's what he said.

6 MR. MARSHALL: Okay.

7 Q. Mr. Poole, you also testified about letters from various
8 politicians?

9 A. Yes, sir.

10 Q. Okay. When was the first letter you receive from a
11 politician?

12 A. Pretty close to the onset. Jack Johnson, I think, was the
13 County Executive, had sent a letter pretty quickly, and we had
14 a Congresswoman join Doug on the line early on.

15 Q. Okay. And when was that.

16 A. We also had ministers come into our business and express
17 their concern as well.

18 Q. Okay. The Congressman that came out it to picket line,
19 when was that?

20 A. I'll just say early on. I didn't write that down in my
21 diary or anything.

22 Q. Okay. Was it, is it safe to say that it was prior to the
23 initiation of 10(j) proceedings against Daycon?

24 A. Very safe to say.

25 Q. Is it safe to say that it was also prior to issuance of a

1 Complaint against Daycon?

2 A. It happened some time in the first three months,
3 absolutely.

4 Q. Okay. You also testified as to letters from schools?

5 A. Correct.

6 Q. And you have two letters that you have introduced here.
7 One here is from Georgetown University?

8 A. Yes, sir.

9 Q. The date of this document is July 14, 2010?

10 A. Yes, sir.

11 Q. To the best of your knowledge, is that when you received
12 this letter approximately?

13 A. Yes, sir.

14 Q. Okay. You will acknowledge that that is well before the
15 10(j) initiated, correct?

16 A. Yes, sir.

17 Q. You will acknowledge that it's the labor dispute that is
18 the reason for this letter, correct?

19 A. Yes, sir.

20 Q. And there is a labor dispute right now?

21 A. Yes, sir.

22 Q. So regardless of the fact that we're in this courtroom,
23 there is a labor dispute?

24 A. My concern was that a ruling of 10(j) against the company
25 could presuppose our guilt prior to the adjudication of the

1 case and it might change the opinions of the people that are
2 maintaining our contracts at our key marquise accounts.

3 Q. Okay. Were you present in this courtroom on January 20th?

4 A. Yes, sir.

5 Q. You are aware then though of the argument that took place
6 regarding the standard and there are four elements of the
7 standard the Petitioner has to show in order to warrant an
8 injunction?

9 A. I learned it that day.

10 Q. And the first element is the likelihood of success on the
11 merits?

12 MR. TRAPP: Your Honor, objection.

13 THE COURT: Yeah. Where are we going.

14 MR. MARSHALL: Mostly, Your Honor, that I am plumbing
15 the veracity of Mr. Poole's sentiment regarding the
16 reputational harm. The reputational harm has nothing to do
17 with whether or not this Court grants the injunction.

18 THE COURT: Well, that's up to me to decide, isn't
19 that?

20 MR. MARSHALL: Yes. And I'm trying to build a record
21 for you.

22 THE COURT: Well, he's here to give us what he
23 believes his company is facing, and he can testify to that and
24 then you can tell me what if anything I should make of it, but
25 let's not ask him.

1 MR. MARSHALL: Okay.

2 Q. Mr. Poole, you said that you're responsible for day to day
3 operations, correct?

4 A. Yes, sir.

5 Q. Strategic objectives and annual planning, correct?

6 A. Yes, sir.

7 Q. Is there a plan about when Daycon will cease to recall
8 strikers?

9 A. There is nothing in the plan right now. I haven't
10 discussed it with counsel, but I'm sure there is a labor rule
11 out there somewhere that tells me my responsibilities.

12 Q. Okay. So your testimony here today is that there is no
13 plan regarding when Daycon will cease to recall economic
14 strikers?

15 A. That is correct. I'm recalling people as needed and have
16 since the request to return to work.

17 MR. MARSHALL: Okay. Thank you, very much, Mr.
18 Poole. I don't have any further questions.

19 THE COURT: Any redirect?

20 MR. TRAPP: Just real brief, if I might, Judge.

21 THE COURT: Okay.

22 REDIRECT EXAMINATION

23 BY MR. TRAPP:

24 Q. John, has the company made a decision one way or the other
25 as to which way it would go if the Court ordered reinstatement

1 of the employees?

2 A. I haven't come to a conclusion. I'd like to reserve that
3 once Her Honor makes her decision, but I believe the prudent
4 course is retention.

5 Q. Has the company changed its position as to the dispute
6 that landed us here?

7 A. The dispute that landed us here, the central issues of
8 progression to top rate by the end of the contract has not
9 changed from the company's possession.

10 MR. TRAPP: Thanks, John. That's all I have.

11 THE COURT: Anything else?

12 MR. MARSHALL: One question, Your Honor.

13 THE COURT: Um hum.

14 MR. MARSHALL: I shouldn't say one, as Mr. Poole
15 knows.

16 RE CROSS EXAMINATION

17 BY MR. MARSHALL:

18 Q. Mr. Poole, why is it, again, prudent to retain the
19 replacement workers?

20 A. Okay. I think I said it earlier. It was that if the
21 replacement workers come back and the union exercises its
22 rights to have another job action, I will be disrupting my
23 business for a second time and the cost of that was very high
24 the first time, and the risk of that and the good will of our
25 customers is too much to bear.

1 Q. In the event that there was a job action, you still would
2 have a fully staffed work force as you contended a moment ago,
3 correct?

4 A. If there was a job action, they wouldn't be coming to
5 work.

6 Q. I'm referring to the replacement workers.

7 A. The replacement workers, you said if I dismiss them and I
8 bring back the bargaining unit workers and another job action
9 takes place, I won't have replacement workers, right. Am I
10 missing something?

11 MR. MARSHALL: I think we both might be confused.

12 Q. In the event that you retained your replacement workers.

13 A. Correct.

14 Q. And reinstated the striking employees.

15 A. Correct.

16 Q. And the current striking employees went out again on a
17 labor action.

18 A. The union represents all employees by the classification.
19 I don't know if they'd take a strike with half the unit or a
20 fraction of the unit. And I still have to deal with the fact
21 that the fundamental issues that separate us from a CBA is
22 still in place whether they come back or not.

23 Q. So you have idea whether or not X number of employees
24 would go out on strike, correct?

25 A. I have no idea what their future decision would be.

1 MR. MARSHALL: Okay. Thank you, Mr. Poole.

2 THE COURT: Any final questions for Mr. Poole? No?

3 MR. TRAPP: Are you ready to get down from the stand,
4 Mr. Poole?

5 THE WITNESS: Absolutely.

6 THE COURT: Then go right ahead. Thank you. That
7 completes your testimony. All right. That's the only witness
8 the defendant or respondent wishes to call today?

9 MR. TRAPP: Yes, Judge.

10 THE COURT: All right. Any rebuttal?

11 MR. MARSHALL: No, Your Honor. I do want to see if
12 we can get a final resolution on General Counsel Exhibit 84,
13 which I think that the Court reserved on admitting. It was a
14 March 17th letter to Brenda Taylor.

15 THE COURT: Mr. Trapp needs to check with somebody to
16 make sure this was sent. I mean, I'm not sure what you wanted
17 to do with this. This purports to be a Daycon letter.

18 MR. TRAPP: I think I can say, Judge, I mean, I think
19 this was Ms. Taylor, testified that she got it, and that's all
20 I was saying was I hadn't seen it and I meant to ask. I
21 didn't, but I'm not opposed to it being part of the record.

22 THE COURT: GC Exhibit 84 is received.

23 MR. MARSHALL: Thank you, Your Honor.

24 THE COURT: Do it want to argue now? Do you want a
25 little break and argue? Do you want to do it in some other

1 fashion or are you exhausted? What do you want to do.

2 MR. MARSHALL: Generally, Your Honor, I am more in
3 favor of written rather than oral. So, if it would please the
4 Court I would request the opportunity to for a post hearing
5 brief.

6 THE COURT: Mr. Trapp.

7 MR. TRAPP: I guess I'm arguing.

8 THE COURT: Um hum.

9 MR. TRAPP: But I would much prefer, I've written so
10 much on this case I feel like Tolstoy or somebody, and I would
11 rather just argue and have it be done today and get on with it.

12 THE COURT: I'll tell you what, Mr. Marshall, Mr.
13 Trapp, why don't we take, it's only 3:30 and had planned to be
14 here all day. We'll take a 15 minutes break and I'll hear what
15 you're prepared to tell me today. If after that, you relax, go
16 back to be offices and you think there's something that you
17 wished you'd said, then you can submit it in writing while I'm
18 working on this otherwise.

19 Okay. We'll compromise that way, because I've read,
20 obviously, what you submitted to begin with. We had that whole
21 couple of hour argument on the first part of the injunction
22 standard, that is the likelihood of success, so you've already
23 had a chance to do that.

24 I have read your submissions that I got after that
25 last hearing, the submissions to the ALJ. And so I think, why

1 don't we hear, while it's fresh in everybody's mind, what you
2 think the evidence has supplemented here. And, again, then if
3 you think there is something that didn't get said that needs
4 to, you can supplement it in writing. All right. Why don't we
5 try it that way. Okay.

6 MR. MARSHALL: Thank you, Your Honor.

7 THE COURT: Okay. We'll take a 15 minute break then.

8 MR. TRAPP: Judge, I do want to note one thing you
9 just made me think of about the record, and I'm ambivalent
10 about it. I don't really care one way or the other, but there
11 were a couple motions that dealt with the issue of as to
12 whether or not the permanent replacement issue was properly
13 before the ALJ or not. I don't think those have been made part
14 of the record before Your Honor. I don't know if you care to
15 see them or not.

16 THE COURT: I don't know that I have seen the written
17 submissions on that, because that was not in the briefs that I
18 just received. Although there way, I think, a footnote
19 reference to it.

20 MR. TRAPP: There was a footnote on it, Judge.

21 THE COURT: So I certainly am aware that that's an
22 issue.

23 MR. TRAPP: But they weren't they actual.

24 THE COURT: I don't think I need to see those, unless
25 you think there is something critical in those arguments. It's

1 the same record, and it's just a legal argument as to whether
2 that issue is before the ALJ, right?

3 MR. MARSHALL: I think that's a safe
4 characterization, Your Honor.

5 THE COURT: That was presented by the parties way
6 back from the beginning of this, so I'm aware of that. I don't
7 think I need to see your arguments on that.

8 MR. TRAPP: Okay. Thank you, Your Honor.

9 THE COURT: All right. Fifteen minutes and then
10 we'll see where we go.

11 (A brief recess was taken.)

12 THE COURT: Okay. Mr. Marshall.

13 MR. MARSHALL: Thank you, Judge. Hopefully I can
14 keep this in somewhat of an organized fashion.

15 What we have shown you here today are a number of
16 aspects going to the irreparable harm faced by not only
17 Teamsters Local 639, the individuals they represent, but also
18 to the National Labor Relations Board ability to remedy unfair
19 labor practices. What we have seen here today day is, number
20 one, waning union support.

21 As Mr. Webber indicated, there has been a
22 diminishment of the attendance and the activities of the life
23 blood of the union at its most visible presence.

24 As is patently obviously, I think, especially by the
25 presence of the people here today, there is an incentive for

1 people to go to the picket line other than just supporting the
2 union. That's getting a strike benefit check.

3 We've also mentioned about the individuals who secure
4 temporary employment. There is certainly a possibility and a
5 probability that they will not go back to work at Daycon
6 ultimately years down the road when the Board issues its final
7 order, because, as Daycon's attorney indicated, they're happy
8 to adjudicate this for years. And when I say "their attorney,"
9 I didn't mean that in the sense of Mr. Trapp and Mr. Rosenberg.
10 I mean Mr. Crupin in the course of the collective bargaining
11 sections.

12 What we've also seen is the effect that these unfair
13 labor practices have had and continue to have on the parties
14 collective bargaining. They bargaining process at this moment
15 is crippled. Their most recent session on July 13th confirmed
16 this. The sticking point was the fact, and the most
17 significant for the union, was that the employees were not
18 going back to work. Here I think that you do have what is
19 arguably a legitimate impasse. Economic strike. Unfair labor
20 practice strike. No waiver. And it's made clear from Mr.
21 Crupin's letters that he is holding the leverage. He's
22 insisting upon the union caving to his position that it's an
23 economic strike.

24 The focus of the bargaining is exactly where it
25 shouldn't be, whether employees have a right to go back to work

1 immediately. We presented testimony from some individuals. I
2 want to be clear, I agree with Mr. Trapp, the purposes of 10(j)
3 is not any vindication of a private right. We are not
4 presenting these individuals' testimony so that person X can go
5 back to work while all their other compatriots stay out. It's
6 not -- That's not the question. Either they all go back or
7 none of them go back.

8 Courts do look to individualized aspects in deciding
9 10(j) injunctions. You look at resignations, decertification
10 petitions. That's an individual's signature on something. The
11 fact that an individual might be working elsewhere and the
12 threat of scattering, so it's not uncommon for a court to look
13 at individualized circumstances.

14 As *Jung Sun* indicated, there is a shift, or could be,
15 in the individual circumstances that are open for a Court look
16 at in a 10(j) context. Ultimately, the issue that relates to
17 the individuals is over petitioner's ability to effectively
18 remedy harms caused by unfair labor practices years down the
19 road.

20 As we indicated here today, there's reinstatement and
21 back pay, but the Board cannot compensate people, an
22 individual, six individuals, 25 individuals, for a period of
23 homelessness, for foregoing medical treatment, for credit
24 problems which might develop because they're out of work.

25 Mr. Trapp put on some evidence in cross-examination

1 about individuals' prior financial problems. I put on the
2 redirect, those financial problems were when those individuals
3 were working, so it's hardly bald speculation to think of what
4 might result if employees continue to have to wait in the wings
5 to have their rights justified.

6 I think Mr. Trapp has done a very effective job of
7 shifting blame, so to speak. It was the union that took these
8 people out. It was a choice. We acknowledge that it was a
9 choice for the union to go on strike, but the union chose an
10 unfair labor practice strikes. And as you are probably well
11 aware of by now, there is a very different calculus involved
12 for an unknown fair labor practice striker versus an economic
13 striker.

14 The union chose an unfair labor practice strike with
15 the knowledge that employees would be protected when the union
16 chose to make an offer for them to return to work.

17 Not to get too much into the facts of the underlying
18 matter, but we're here today because of what happened on
19 April 22nd, when the employer snuck out of a bargaining
20 session.

21 Again, I don't want to get too much into the
22 likelihood of success on the merits, but I posit that the other
23 inquiries that the Court needs to go through flow from that
24 initial inquiry of when we were here before you had mentioned
25 how you viewed individuals in equipoise. I would posit that

1 the individuals aren't in equipoise, because that's an inquiry
2 down the line. That's an inquiry that takes place after the
3 likelihood of success on the merits has already been
4 determined.

5 There is a clear difference. It's not equipoise
6 between a victim and a non-victim. Furthermore, as we
7 mentioned here today in Mr. Webber's testimony, and which was
8 the reason why I wanted the Court to have a sign and go through
9 his testimony regarding where the picket line was. These
10 replacement workers knew full well that there was labor dispute
11 going on. They went by it every day. They saw these people
12 and they had ever reason to suspect that their employment could
13 end at any time, and ultimately that's what will happen when
14 the Board prevails on the merits in the underlying
15 administrative action.

16 Now, Mr. Poole testified regarding feeling a need to
17 retain the replacement workers. I would posit his testimony
18 was specious and simply incredible. First of all, that would
19 be an automatic defense in any 10(j) case where there was
20 reinstatement involved, regardless of whether it was for
21 economic strikers or unfair labor practice strikers or
22 individuals discharged in violation of a different section of
23 the National Labor Relations Act.

24 That, "Well, we cannot, we well be irreparably be
25 harmed by reinstating because we're going to keep the person

1 that we replace them with." That would be an automatic
2 defense. Furthermore, it ignores that if the likelihood of
3 success on the merits goes in the Board's favor and ultimately
4 the Board prevails on the underlying administrative action,
5 Daycon will have to incur precisely the kind of impact it's
6 saying here today is an irreparable harm, basically paying two
7 people to do the same job.

8 As for the aspect of Mr. Poole's concern about a
9 future job action, frankly I query the likelihood of that
10 happening when employees have clearly seen what the employer's
11 response is to a job action.

12 We come back to a central point. The law should not
13 allow a wrongdoer to benefit from its illegal actions. That's
14 precisely what's taken place here.

15 THE COURT: But isn't that what the NLRB ultimately
16 has to decide? My question here in the balance of hardships is
17 not focused on you win everything ultimately. It's balancing
18 if you lose but I have issued injunctive relief here, I have to
19 balance what the harm has been to the company for improperly
20 being ordered to do something.

21 MR. MARSHALL: Um hum.

22 THE COURT: So your argument that I'm only going --
23 that you're only asking me to do what ultimately they're going
24 to have to do, or that the harm to them is only ultimately what
25 they're going to have to pay anyway is focused a little

1 incorrectly.

2 What I have to balance is assume they're right, but I
3 conclude in this proceeding to issue some or all of your
4 requested relief.

5 MR. MARSHALL: Um hum.

6 THE COURT: So I make a mistake, but I've ordered
7 them to take back the striking workers now. I have evidence
8 now that it's about what, a hundred thousand dollars a month.
9 I hear you on whether they really have to keep the others, but
10 assume that's true, that they keep the replacement workers and
11 appropriately so. Then they're paying an extra hundred
12 thousand dollars a month that they shouldn't have the pay.
13 That's what I've to balance. Not whether ultimately they will
14 have to make back pay and reinstatement.

15 MR. MARSHALL: I see your point, Your Honor. But I
16 think that that inquiry has to be informed by the initial
17 inquiry of the likelihood of success on the merits.

18 THE COURT: Well, I have to balance -- No. The
19 balance of equities is an independent factor. There are four.
20 One is the likelihood of success on the merits. The second is
21 the irreparable harm to the Petitioner. But the third is
22 called balance of equities, and that has to focus, I believe,
23 on what harm would be imposed on a defendant by granting the
24 relief. And I think that is independent about whether
25 ultimately you win or they win before the Board and the Fourth

1 Circuit.

2 Because if they're not ultimately required to treat
3 this as an unfair labor practice strike and take everybody back
4 and pay back pay, then requiring them to take everybody back
5 now with at least front pay, is an element of harm.

6 MR. MARSHALL: I see your point, Your Honor. I, at
7 least I think I do. Late if the day. I do think that, you
8 know, if that inquiry is to be independent, it has to be
9 considered in conjunction with Mr. Poole's frankly incredible
10 testimony that this company is going to pay two people to the
11 same job while the administrative proceeding goes through its
12 whole long process.

13 If they chose what is I think much more likely and
14 sensible for any business, which is to pay one person for the
15 job, then, and I don't mean to be, you know, demeaning to any
16 individual employee. In that sense, the employees really are
17 fungible. You pay one person, it doesn't really make a
18 difference if you pay the striking employee or the replacement
19 employee, they're going to pay someone. So the hardship isn't
20 nearly as profound as Daycon claims it to be.

21 To pick up where I think I was, what precisely has
22 taken place here is that Daycon has been allowed to benefit
23 from their illegal actions. It is clear, as Mr. Webber
24 testified, Daycon has strong leverage at the bargaining table.

25 It's also clear, in a bottom line sense, as Mr. Poole

1 indicated, it's been cheaper for them to operate with
2 replacement workers than it would be if people were still
3 there.

4 Your Honor, I'm going to close with, and this is my
5 belief, I'm aware at this moment of only one case where on a
6 10(j) petition a District Court did not find that an employer's
7 failure to reinstate unfair labor practice striker involved an
8 irreparable harm, and that's the Detroit Newspapers Agency
9 case.

10 I would welcome the opportunity to research this to
11 exhaustion and indicate whatever I can find to the best of my
12 abilities in a submission to the Court, but --

13 THE COURT: Was that -- I mean, was that a case where
14 the ALJ had already decided it was an unfair labor practice or
15 where there was no dispute that's what kind of strike it was.
16 I understand your point --

17 MR. MARSHALL: Right.

18 THE COURT: -- but was the fact the same as here,
19 where this is very much a dispute as to whether it was or was
20 not an unfair labor practice?

21 MR. MARSHALL: You know, to tell you the truth, off
22 the top of my head, I don't recall. I think that there was a
23 very strange procedural issue in Detroit Newspapers Agencies
24 where there had been a prior unfair labor practice case.

25 THE COURT: Um hum.

1 MR. MARSHALL: Where there was a determination that
2 it was an unfair labor practice strike, and then a wholly
3 separate administrative proceeding that relied upon the whether
4 or not it was an unfair labor practice strike.

5 THE COURT: I suppose I should have said to you the
6 other way around, are all of the case where they found it was
7 irreparable harm clearly unfair labor practice strikes?

8 MR. MARSHALL: Well, as the Court knows, different
9 circuits apply different standards, so --

10 THE COURT: Well, and that's the other point. Even
11 this Circuit has only recently stated clearly, in my view, what
12 the standard is under 10(j). That is *Muffley* tells me I use
13 the normal preliminary injunction standard, which requires
14 proof of irreparable harm.

15 MR. MARSHALL: Yes.

16 THE COURT: As opposed to some more nebulous just and
17 proper standard.

18 MR. MARSHALL: I think *Muffley* refers to a likelihood
19 of showing of irreparable harm. But to be frank --

20 THE COURT: Well --

21 MR. MARSHALL: -- I don't recall.

22 THE COURT: And *Muffley* was before *Real Truth About*
23 *Obama*. That's what I'm saying. Yes. It was based upon --

24 MR. MARSHALL: Absolutely.

25 THE COURT: It was after *Winter* but before *Real*

1 *Truth.*

2 MR. MARSHALL: Absolutely.

3 THE COURT: Um hum.

4 MR. MARSHALL: Absolutely. And I think, I think
5 that's where that there may not be such a great distinction
6 between what the standard is when you consider the three cases
7 in a row as part of a seamless web.

8 That's all I have to say, Your Honor. Thank you,
9 very much, for your time today. I appreciate it.

10 THE COURT: Okay. Mr. Trapp.

11 MR. TRAPP: Thank you, Your Honor. And may it please
12 the Court, I guess I would like the begin, I heard Mr. Marshall
13 say that I did an effective job on turning something somewhere
14 and I think I'll stipulate to that fact. I like to hear those
15 kind of things.

16 But I'd like to jump right in with the incredible
17 nature of Mr. Poole's testimony, according to Mr. Marshall. It
18 was just three weeks ago here in this courtroom that Mr.
19 Marshall was standing here and telling Your Honor that it was
20 just an entrepreneurial decision that Mr. Poole would make, and
21 it didn't seem very incredible back then to bring the employees
22 back on top of the work force that was already there. And if I
23 remember right, Mr. Marshall even cited to the *Muffley* case and
24 said that's what happened there.

25 THE COURT: On the *Muffley* case, I think ultimately

1 the company was able to bring the people on who wanted to once
2 the injunction issued without displacing any one.

3 MR. TRAPP: Yeah.

4 THE COURT: It's a very different fact situation, I
5 think, then we have here.

6 MR. TRAPP: I agree. And they had 85 employees and
7 they originally thought that they couldn't bring them back and
8 then they told the Court before it ruled that yeah, they could
9 bring them back and in fact had brought all the employees back,
10 so I agree with the Court that that was --

11 THE COURT: That's not even bringing them back. I
12 think it was bringing them on.

13 MR. TRAPP: Bringing them on.

14 THE COURT: Yeah.

15 MR. TRAPP: That's correct, because they were not
16 hired rather than strikers. So, I'd like to flesh out a little
17 bit of the standard that we're dealing with and I just heard
18 the colloquy between yourself and Mr. Marshall, and I agree
19 with the Court's interpretation of the *Winter* case and *The Real*
20 *Truth About Obama*. I think that those have supplanted what
21 every prior standard there was, and I think that was under
22 *Blackwelder* as cited in *Muffley*, and it makes clear now that
23 the four factors, while they haven't changed, they are
24 interpreted differently, or at least more strictly.

25 And *The Real Truth About Obama* and *Winter* made clear

1 that each prong must be clearly established by the Petitioner,
2 and that the Petitioner bears the burden before the Court of
3 establishing it, and it's not some sort of a sliding scale,
4 which was the case under *Blackwelder* and under many other cases
5 and other circuits such as, I think the *Miller* opinion from the
6 Ninth Circuit was cited many times in the briefs and in the
7 argument in January.

8 And a lot of the case law, I think, is on the verge
9 of changing because of the *Winter* opinion and some of the other
10 ruling that have come out subsequent to *Winter* from the Supreme
11 Court as well. I think there's an EBay opinion that's out
12 there and there's some other one that I can't remember off the
13 top of my head. But the Court has been very clear in the last
14 couple years of enforcing more and more strictly the standards
15 and the determination of the factors to be applied in granting
16 preliminary injunctive relief.

17 They have made it more and more clear that each
18 factor stands or falls on its own, and that the fact that you
19 might have a wonderful case doesn't mean anything if you don't
20 have any irreparable harm. And the fact that you have tons of
21 irreparable harm doesn't mean anything if you don't have a
22 strong case.

23 Each factor stands or falls on its own. And I'll
24 just point out briefly the four factors as I understand them.
25 The first one is likelihood of success on the merits. There

1 is, I believe, a lot of the case law that refers to some sort
2 of a deference to the Board, and this is everywhere. It's even
3 in the legal treatises, so I feel a little off the reservation
4 in stating it this way, but I think I'm bold enough to do it
5 because its clear from the Supreme Court and from the opinions
6 that have come down, that those standards are no longer tenable
7 under *Winter* and *The Real Truth About Obama*.

8 And the standards that I'm referring to are the ones
9 that say the test is merely reasonable cause and then just and
10 proper. I don't think that that's entirely appropriate under
11 10(j) any more. And I think that, certainly, the opinions that
12 talk about reasonable cause being almost a total deference to
13 the Board are no longer controlling after *Winter*.

14 The standard cannot be under *Winter* that there is
15 some evidence and a colorable legal theory. That's not how
16 it's approached for primary injunctive relief. And there is no
17 indication anywhere, in fact *Muffley* even recognizes this fact,
18 that there is no indication that the Court intended or that the
19 10(j) statute intended to supplant the equitable, the normal
20 equitable factors that are applied by a court in determining
21 preliminary injunctive relief.

22 And so there is not even an argument that can be made
23 that "Well, this is a statute so it doesn't matter," because
24 even *Muffley* has said straight out that there is no indication
25 that the equitable factor should not be used. Now, they have

1 been tweaked by *Winter* and *The Real Truth About Obama*, but
2 certainly that holding still stands.

3 The second factor is the likelihood of irreparable
4 harm. I think that's what today was all about. That's why
5 we're here was to establish that.

6 And the third factor is the balance of equities and
7 has to be in the Petitioner's favor and, again, the Petitioner
8 bears the burden.

9 And the fourth factor is it must be in the public
10 interest.

11 I'll note here that, a couple quick things. The
12 union has been around for a long time, several decades. It's
13 not a babe in the woods kind of union. And this is, it's the
14 Teamsters, for crying out loud. It's not, I mean, it's not
15 some make believe union.

16 There is no bad faith. That's been stipulated and
17 stated on the record. There is no allegations of bad faith as
18 against the company, and there are no ongoing unfair labor
19 practices. There are no -- there is no active anti-union
20 animus that's been pointed to anywhere.

21 And the union has a very capable business agent and
22 very capable officers, and there is no indication that they
23 can't handle themselves in these kind of disputes, or that they
24 can't handle and organize their members as they go on. In
25 fact, a lot of them are here today and I think that's a tribute

1 to the union and to its, to how it is viewed by the members.

2 As far as the likelihood of success on the merits, I
3 don't want to talk too much about it. I'll refer mostly to my
4 argument before the Court back in January.

5 It turns on impasse. I'll note that today, even
6 today, though, I think Mr. Webber made clear that the depth of
7 the commitment to each side is unchanged even today. And here
8 we are nine months after we say there was impasse and then say
9 there was more room to bargain. But neither party has move,
10 even today.

11 And Mr. Webber sat in the chair today and said "We
12 still think their position is untenable," speaking of the
13 company. And he is entitled to that belief. The union is
14 certainly entitled to that belief and it's validly held, but it
15 doesn't mean that we can't have our belief. And that, I think,
16 illustrates that the parties are so far apart that we're at
17 impasse.

18 The number one issue was progression to top rate.
19 That always was and always has been. I think I've pointed out
20 sufficient arguments, Your Honor, in January as to why we have
21 likelihood of success on the merits. And in any event, you
22 have our briefs and you have the record and I think that I'll
23 just leave that one alone and go on to the likelihood of
24 irreparable harm.

25 Now, here I would just like to state, don't forget at

1 the beginning of this, and I know I'm guilty of sort of
2 flopping my position too, but the initial Petition was filed
3 and said "You need to grant injunctive relief based solely on
4 the administrative record and these two affidavits," and that
5 was it. There was no need for today, according to the Board at
6 the time they filed the Petition.

7 Now, they subsequently backed off of that and we had
8 to have this hearing to allow them an opportunity to prove
9 irreparable harm, and I don't think that that, in my estimation
10 I don't think that was proven today. And given that the
11 Petitioner has the burden on every single factor, I think even
12 if they were likelihood of success on the merits, there as been
13 no demonstrable likelihood of irreparable harm. There is --
14 the harm here is neither likely nor irreparable.

15 Again, as Your Honor is aware of our position on this
16 is that the testimony of the individuals as to their
17 individual, private and personal problems, while compelling is
18 entirely irrelevant to the determination to the made by Your
19 Honor.

20 Even if it were relevant, I think we demonstrated
21 pretty clearly that a lot of these medical and financial and
22 rent type issues were ongoing before and after the strike. And
23 I think that to their credit, each of the witnesses freely
24 admitted as much. But in any case, the problems predated the
25 strike and in most cases by years.

1 Now, is there any harm to the union here? None that
2 I could ascertain directly. I kept trying to put any finger on
3 exactly where the harm was to the union and I couldn't quite do
4 so. And, in fact, I think when Mr. Marshall asked Mr. Webber
5 about, you know, what support for the union meant and he talked
6 about belief in the union's causes and belief that they're
7 fighting for you and belief that they'll get you a good
8 contract. And then finally said "Oh, and by the way, it's also
9 showing up on the picket line."

10 As for the first three factors, I would just state if
11 the Court can enjoin parties to stop believing something, then
12 I'd ask that you enjoin my daughters from stopping believing in
13 Santa Clause, because it makes Christmas a whole lot better for
14 me, that they believe in Santa.

15 But even if you get to the one that has some teeth to
16 it, to the concrete nature of support for the union, the
17 picketing, there is no evidence of harm there. There is no
18 evidence of loss of support. And I had Mr. Webber I think
19 struggling to sort of come up with anybody that doesn't support
20 the union still.

21 Even the people that we specifically singled out and
22 asked about, there was, I asked him directly, was there a loss
23 of support for the union? Is there anything concrete that you
24 can point to, and there just wasn't.

25 This comported with Mr. Brown. He submitted an

1 Affidavit in support of the Petition, and there was a couple
2 points, I think, to be made out of that.

3 I made some of them in the last argument, but I'll
4 point to, in Mr. Brown's Affidavit attached to the Petition, on
5 page four he says straight out "Everybody has their own groups
6 and cliques, so I'm not sure why everyone doesn't come out or
7 what their feeling about the union may be." That certainly
8 doesn't support a loss of support for the union.

9 There is also a statement here, on page 5, that "The
10 employees who are back working do still stop to talk to us on
11 their way in and out of work, and they tell us they're still
12 here and still support us." So the employees who have been
13 recalled are still there and still support the union.

14 He notes that there have not been any membership
15 meetings at the hall this fall and this says straight out he
16 hasn't heard any guys criticize the union or blame the union.
17 And I think that that really demonstrates, you know, if the
18 shop steward hasn't heard anything about even criticism of the
19 union after a nine month strike, then you've got pretty good
20 support.

21 He also says that their employees have to be actively
22 looking for work as a condition of collecting unemployment, and
23 if there were some sort of diminution on the picket line,
24 perhaps that's one explanation. And Mr. Webber testified to
25 others.

1 And then, finally, in his affidavit he says that "The
2 employees don't want to leave employment with Daycon because of
3 the years they have invested and the friendships they have
4 built." And I didn't begrudge them that. I think that's
5 legitimate, but it points out that at the end of this thing
6 there is no harm to the ultimate remedy that can be issued by
7 the Board, because it's clear that these employees want to
8 remain with Daycon, and Mr. Webber even said that they have
9 indicated to him that they will accept reinstatement and they
10 would accept recall if and when it came. And even if they
11 happened when the Board rules, they would be happy to come
12 back.

13 Mr. Brown references numerous employees by name, and
14 carrying over to page 6 of the Affidavit, says that all of
15 these employees have said things about Daycon being their home
16 and they want to work there. Again, that comports with Mr.
17 Webber's testimony as well. So I don't see much harm to the
18 union. The support for the union seems to be pretty strong,
19 even now.

20 And Mr. Marshall made some comment, or some remark
21 about the temporary employees and how they'll probably disburse
22 and dissipate and they wouldn't come back. I don't know if I
23 as just misremembering it, but I could swear that Mr. Webber
24 said the exact opposite, and that the employees who had
25 accepted what he termed "temporary employment," he termed it

1 temporary employment because he knew that they had indicated to
2 him that they wanted to return if and went Daycon allowed them.

3 So, given that fact, there is clearly no indication
4 that the remedy that could ultimately be handed down by the
5 National Labor Relations Board would be ineffective in any way.
6 If we're wrong here and it's ultimately determined that we're
7 wrong, each of these employees will be reinstated by the Board
8 and they'll be given back pay, and it sounds like they would
9 take that and that would be a full remedy as recognized by
10 numerous cases.

11 Again, looking at the loss of support on the picket
12 line, the General Counsel Exhibit 82, I don't know exactly
13 what, how much value it had, but to the extent that the numbers
14 were reliable, I think that they show that they were about
15 where the support could be expected. And I took Mr. Webber
16 through and I think I bored the whole courtroom to tears while
17 I was doing it, but I think I established that the support
18 that's out there on the picket line now is pretty good after
19 nine months. And if you count the employees who have gone back
20 in to work and are thus not able to be out on the picket line
21 all day long, and the employees who have gone elsewhere and
22 indicated to Mr. Webber that they desire the return to Daycon
23 when they get the chance, the numbers have not diminished at
24 all.

25 Mr. Webber indicated that he has no experience with

1 strikes that are this long, and that I don't think there is any
2 basis to make a leap of faith to say any dwindling that the
3 Court might perceive in lack of support for the union is due to
4 something that Daycon did rather than the length of the strike,
5 or factors that are particular to each and every individual
6 member that has chosen to strike or not to on a given day.

7 I think that, again, this is, I brought up in
8 January, but the length and the outcome here of this strike
9 indicates that this is a failed strike and it shows that there
10 is great support for the union in that even if there is a
11 failed strike, they have not lost the support of the members
12 and are maintaining that pretty strong.

13 There is no impact on bargaining here that is
14 evident. Mr. Webber said even today that they find Daycon's
15 position untenable, and Mr. Poole said that the company has not
16 changed it's mind. So if Your Honor were to order bargaining,
17 among other remedies, there is no indication that the parties
18 are willing to give one way or the other. So there will be no
19 impact on bargaining.

20 The resignations that were submitted as an exhibit
21 were all very early on, right after the strike, and I think the
22 obvious inference is that they came about as a result of the
23 union's decision to call a strike and the individuals who
24 submitted the resignations disagreement with that decision.

25 There is no inference that this had anything to do

1 with something that Daycon might have done. It's clear that it
2 came about as a result of the decision to strike with which
3 each individual disagreed to the extent they submitted a
4 resignation of their membership.

5 There is a mention of, you know, in 10(j)s there is
6 withdrew and there is decert petitions but, again, that just
7 points out we don't have any of that here. There's no withdraw
8 of recognition. There's been no decert petition filed here.
9 There is no attempt to avoid the union.

10 And if anyone gained leverage here as a result of
11 different actions, it was the union, or at least so it thought.
12 I took the testimony leading up to the unions' offer to return.
13 They weren't going to offer to return. The strike was going
14 strong and they were committed to it, and Mr. Webber said that
15 the only time that they thought that they would submit an offer
16 to return was after the National Labor Relations Board told
17 them, without issuing the Complaint, but told the union "We're
18 going to issue a Complaint." And at that moment, in fact that
19 day, Mr. Webber and the union filed their offer to return. And
20 that would not have happened, and the request to bargain would
21 not have happened and had not happened for several months,
22 until they get increased leverage from the Board indicating
23 that "Hey, we're going to back you on this."

24 And once they did, now the union swung into action
25 and said "Oh, by the way, we're going to start the clock

1 running for back pay, and we'd like to sit down and meet with
2 you again." And when they came to meet on July 13th, did the
3 union back away from its proposals or say "Let's, you know,
4 let's work together and get a deal." No. They held firm to
5 the very things that had driven to impasse in the first place
6 and driven to strike.

7 They still submitted the five year contract term.
8 According to them, they still submitted it. According to us
9 they had never formally proposed the five year agreement. But
10 if you look at it solely from the union's standpoint, they were
11 again throwing out something that has already been rejected.

12 The second prong of it was the five year wage
13 progression, and that was completely rejected and was the
14 fundamental issue that separated the parties, and they throw it
15 back out there on July 13th.

16 Whether they moved on that or not, it still looks
17 like that fundamental issue was right back where the union said
18 it was in April. They haven't moved.

19 And it's interesting to me that on the third and
20 fourth prongs of that offer that was made on July 13th, they
21 show that the union felt that it had gained strength, certainly
22 not that it lost strength.

23 Now they resurrect the pension once again and say
24 "Oh, by the way, we want you to participate in the pension in
25 the fourth year." This had not been discussed. It had been

1 rejected in January, just as it's rejected every single time it
2 comes up for several decades. And now in July it rears its
3 head again and it's back on the table. I think that's an
4 indication of who felt like they had the upper hand once the
5 Board indicated that it would act.

6 And the, given the putting the pension back, on the
7 10-cent drop was -- it was -- it didn't have an impact. And in
8 any event the 10-cent drop is still tied to concept of wage
9 progression, which was the fundamental issue, the 800 pound
10 gorilla that was the big divide between the parties and it was
11 not going to be agreed to, and I think everyone knew it,
12 although the union might have felt that they gained some
13 strength and they had become emboldened by the idea that the
14 Board was now going to back them.

15 Now, after July 13th the parties had another
16 disagreement, and it was about the nature of the strike. There
17 was some indication today that the Board will try, has tried to
18 take the tact that now, based on the unlawful conduct of
19 Daycon, they now were using this as leverage. But, again, for
20 the reasons I just said, I think the leverage was coming to
21 support the union, not Daycon.

22 And, in any event, even if you didn't believe that,
23 it still is the union taking the exact opposite position. They
24 can't say Daycon is saying that this is a economic strike and
25 that makes them bad actors, when they're taking the position

1 that this is a ULP strike and in fact we're not even going to
2 bargain with you until you recognize that it's a ULP strike.

3 At least the company is still willing to bargain and
4 has indicated that it's willing to bargain any time that the
5 union asks. But the union after that meeting said "We won't
6 even ask you to bargain until you recognize that this is a ULP
7 strike." And Mr. Webber said "You have to rescind the changes
8 and you have to reinstate the employees. Only then we will be
9 on a level playing field and only then we will even sit down to
10 bargain with you." And then once we get there, we're back at
11 the fundamental disagreement about wage progression.

12 Now, I'll move on. I think that that shows that
13 there is no irreparable harm here. There's no irreparable harm
14 to the union. There's no irreparable harm to the Board's
15 ability to remedy the unfair labor practices if it indeed finds
16 in the union's favor ultimately.

17 The third factor is whether or not, or the balance of
18 the equities, and here I would indicate that Mr. Poole's
19 testimony I think would allow the Court a reasonable basis for
20 saying that even if you assumed reasonable likelihood of
21 success on the merits by the Petitioner, and then further
22 assumed that there was irreparable harm, they would still fail
23 on the third factor, because the harm that would be incurred by
24 Daycon if the injunction was granted erroneously, far outweighs
25 any amorphous, negligible impact on the union or the

1 Petitioner if it's not granted erroneously.

2 And Mr. Poole testified clearly that there is a heavy
3 economic impact that would occur to the company likely, and it
4 went either way. It went whether, you know, they can bring the
5 employees back and keep the replacements on as sort of an
6 insurance policy against further job actions, in which case it
7 would coast them a hundred thousand dollars a month roughly.
8 Or, even if they brought them back and decided to save the
9 money and took the risk that of subjecting themselves to
10 another job action and disruption of the work force, it would
11 still be a greater cost because, as Mr. Marshall pointed out
12 with Mr. Poole, the employees that are there right now, some of
13 them are at lower rates. And so if you threw them out and
14 brought in people at higher rates, that's still an economic
15 impact and it is still to not be repaid if and when there is
16 ever a finding that the National Labor Relations Board was not
17 correct in its estimation here.

18 Mr. Poole also testified about the reputation of the
19 company and, you know, I don't know exactly how you quantify
20 it, but there is a reputation and good will in every business
21 and especially a business like Daycon that deals with the
22 marquis customers, universities and the White House and the
23 Pentagon and places like that.

24 It's been all over the press. It's been in the
25 Washington Post and other places about this very matter and the

1 labor dispute. And if Your Honor were to rule against Daycon,
2 it will be in the paper again and it will be assumed by
3 everyone one who glances at the headline "Hey, those guys are
4 bad guys. They did exactly what the National Labor Relations
5 Board said they did."

6 And if ultimately a couple years from now the
7 National Labor Relations Board and/or the Court of Appeals
8 decides that Daycon didn't do these bad things, there's not
9 going to be a front page story in the Washington Post about it,
10 and even if there were, that's not going to bring back
11 customers who might make up their mind in the interim,
12 especially at places like universities that are subject to and
13 liable to be influenced by students and organizations and
14 impacted one way or the other and have already written letters
15 that they might make a decision to walk away. In that sense,
16 you know, when you're in the news and you have a bad light cast
17 around you, that's not good.

18 I'll leave that alone. I'll just say that I think
19 that even if you got past the first two factors, the third
20 factors would show that the harm to the employer here would
21 outweigh any alleged harm to Petitioner.

22 And, finally, the factor of the public interest.
23 Again, there's a full remedy available. The evidence shows
24 that the employees intend to return if and when they are ever
25 given that opportunity, and so there is no indication that the

1 remedy would fail here and that they would have their rights
2 respected.

3 And for the union, presumably, as Your Honor pointed
4 out in January, the union, if it would ultimately be seen to be
5 right and pointed out as being right all along, and they have
6 not lost any support along the way.

7 Now. I guess I'll close by saying I'm not happy here
8 and in the company is not happy that there's a strike and that
9 there's employees that are out of work and that they don't have
10 insurance and that there is a lot of negatives that go along
11 with this. And no one wants to see the employees be hurt or be
12 out of work and be harmed in any way, and a lot of these
13 employees have given good years and good efforts on behalf of
14 Daycon.

15 But ultimately the reason that they're out of work, I
16 think this is where Mr. Marshall said I effectively turned it
17 this way, but it's the truth, Your Honor. The reason that the
18 employees are out of work is not due to any action that was
19 taken by the company.

20 The union had every right and every opportunity to
21 file an unfair labor practice and say, you knows, the company
22 wrongfully declared impasse and implemented this wage increase.
23 They didn't have to go on strike, and yet they chose to and
24 here we are today.

25 And even then, each individual chose to follow the

1 union out on strike. There were at least 11 individuals,
2 according to the evidence here, that chose opposite. Those
3 individuals have a good job with a good company, making good
4 wages and getting the raises that were implemented by the
5 company.

6 And so the individuals who are suffering as a result
7 of that, in the final analysis are suffering as a result of
8 their own decision. This isn't a case where the company
9 terminated them, or failed to hire them or took some other
10 action that was attributable to the company. It's the exact
11 opposite.

12 And in that sense, I'd say that the, an employee who
13 goes on strike and is told before they go on strike that
14 "You'll lose you are salary, obviously. You'll lose your
15 health insurance," and then they make the decision to go on
16 strike and the company weathers the storm and goes through all
17 the slop that's associated with it and toughs it out and makes
18 it through and now the employee come back and says "Well, you
19 have to reinstate me. That's, you know, because I shouldn't be
20 out of work and I shouldn't be of insurance." That's like the
21 criminal who kills his parents and says "Judge, you have to
22 have mercy on me because I'm an orphan."

23 Again, it's the result of their own action and they
24 have no one to blame other than themselves. While I do feel
25 sympathetic, and it's not a positive thing, that's just the

1 truth of it.

2 So I guess, you know, you can choose what you, you
3 can choose your actions but you can't choose your consequences
4 and this is just a consequence of a failed job action. It's a
5 legitimate tool under the National Labor Relations Act, and
6 there is nothing here that makes this a typical 10(j) case.

7 As I stated at the outset in January, I laid out a
8 whole litany of reasons why this is not a typical 10(j) case
9 and I am not the world's 10(j) expert. This is the first 10(j)
10 case I've ever been a part of. But I've read a million of
11 these cases and I think I've read everything out there, and
12 every case I read is light years from where we are.

13 I could pick out any case out of my box of cases over
14 here, and hold it up and give 15 reasons why it's
15 distinguishable from the, factually and legally from the case
16 before Your Honor. But I have already said all that, so I'll
17 let it go.

18 Finally, I'll close. There was a reference to the
19 *Schaub* opinion, and I pulled that out of my box, and there is a
20 quote from there that I would point Your Honor to. This is
21 from the District Court opinion, not from the Sixth Circuit
22 which affirmed, but it's 984 F Supp 1048. It's *Schaub vs.*
23 *Detroit Newspaper Agency*.

24 And there under, this was under the reasonable cause
25 prong. It's interesting. Under the District Court, using the

1 standard of reasonable cause and just and proper, found that
2 there wasn't even reasonable cause to issue the injunction and
3 stated that the refusal to reinstate striking workers is not an
4 unfair labor practice without a final adjudication that the
5 strike itself was an unfair labor practice strike. And that's
6 directly applicable to this case I think, Your Honor. So I
7 would say that the *Schaub* opinion certainly supports us as
8 well.

9 There's another opinion, I think from 1975. I don't
10 know how to pronounce it. I think it's *Boyray*, or *B O Y E R*
11 *vs. Pilot Freight Carriers*. And I didn't write down what that
12 cite was, but it also holds that reinstatement is a remedy
13 that's properly reserved for the Board, and there are plenty of
14 cases that recognize that principle.

15 And I thank you very much for your time, Judge, and I
16 ask that you deny the Petitioner's request for an injunction.
17 Thank you.

18 THE COURT: Anything else at that point, Mr.
19 Marshall?

20 MR. MARSHALL: No, Your Honor. Thank you, very much.

21 THE COURT: Okay. I will take this under advisement.
22 As I indicated to counsel, if you, in the reflection of your
23 offices over the next couple of days, you think of something
24 that you wish you'd said, let me know and you can submit it in
25 writing. Okay. Very good. I will take the issue under

1 advisement. Thank you.

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COURT REPORTER'S CERTIFICATE

-oOo-

I certify that the foregoing is a correct transcript
from the record of proceedings in the above matter.

Date:

/s/ _____

Sharon O'Neill

Exhibit C

Kim Torrance

Subject: Gold vs. Daycon transcript
Attachments: 02102011 Gold.pdf

From: Sharon_O'Neill@mdd.uscourts.gov [mailto:Sharon_O'Neill@mdd.uscourts.gov]
Sent: Friday, February 25, 2011 1:32 PM
To: Grace Balian
Subject: RE: Gold vs. Daycon

Hi Grace,

Attached in PDF is the transcript from 2\10\11. Lots of names, so if you find anything that needs to be corrected, please let me know.

Thanks,
Sharon O'Neill